DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

H.R. 4169

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1982, AND FOR OTHER PURPOSES

PART 1—(Pages 1–1099)

Department of Commerce

Department of Justice

Department of the Treasury

International Trade Commission

Japan-United States Friendship Commission

Marine Mammal Commission

Select Commission on Immigration and Refugee Policy

The Judiciary

U.S. Metric Board

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DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

THURSDAY, MARCH 5, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room S-146, the Capitol, Hon. Lowell P. Weicker, Jr. (chairman) presiding.

Present: Senators Weicker and Rudman.

DEPARTMENT OF THE TREASURY

OFFICE OF THE SECRETARY

CHRYSLER LOAN GUARANTEE PROGRAM

STATEMENT OF R. T. McNAMAR, DEPUTY SECRETARY

ACCOMPANIED BY:

MICHAEL A. DRIGGS, ACTING DIRECTOR, OFFICE CHRYSLER FINANCE
LUKE D. LYNCH, JR., ASSISTANT GENERAL COUNSEL (DOMESTIC FINANCE)
CHARLES V. McFADDEN, DEPUTY ASSISTANT DIRECTOR (FINANCIAL MANAGEMENT), OFFICE OF THE SECRETARY

BUDGET REQUEST

Senator WEICKER. The committee will convene. This morning the subcommittee begins consideration of the 1982 budget estimates for the Departments of State, Justice, Commerce, the entire Judiciary and the Related Agencies funded by the State, Justice and Commerce appropriations bill.

The estimates for fiscal year 1982, which were submitted by President Carter, total $10,311,141,000—an increase of $579,385 over the fiscal year 1981 appropriations enacted and passed. The budget estimates of the Reagan administration will be formally submitted to Congress next week. As we hear from agency witnesses, we will be taking testimony on the requested fiscal year 1981 supplementals, rescissions, and any deferrals in addition to the regular 1982 appropriations requests. That is a rather full plate and our schedule this year is going to be very tight. There will be difficult decisions to be made. With the cooperation of the Members of the subcommittee and the administration, I am hopeful we will be able to complete our hearings by the end of April.

Now, I want to point out as a matter of record that it will be my intention during the course of these hearings to elicit testimony that will deal with the substance of their operations. It will not be reason enough, in the sense of justifying the requests for any of the agencies, for the witnesses to state that OMB told them either to up their request or to reduce their request. I expect the witnesses, in other words, to testify as a matter of their knowledge as to what their agency's needs are.

We will begin our hearing this morning with a request on the Chrysler Corp. loan guarantee program. The amount requested is $1,356,000, an increase of $36,000 from the fiscal year 1981 appropriation, and provides for 17 permanent positions and administrative expenses to enable the program to administer the Loan Guarantee Board established by the Guarantee Act.

Appearing on behalf of this request is the Hon. R. T. McNamar, Deputy Secretary of the Treasury, who is accompanied by Michael A. Driggs, Acting Director of the Office of Chrysler Finance, Luke D. Lynch, Jr., Assistant General Counsel—Domestic Finance, and Charles V. McFadden, Deputy Assistant Director—Financial Management, Office of the Secretary.

Mr. McNamar, we will be pleased to hear your statement with regard to this request.

OPENING STATEMENT

Mr. MCNAMAR. Thank you very much, Mr. Chairman. My testimony will discuss the administration's request for an appropriation to cover the fiscal year 1982 administrative expenses of implementing the Chrysler Corp. Loan Guarantee Act of 1979.

On November 10, 1980, the Loan Guarantee Board submitted its second report to Congress for the period April 1 through September 30, as required by section 14 of the Guarantee Act. Since that report, Chrysler has undergone a series of major changes. We will be pleased to discuss those with you this morning.

The company has successfully completed complex financing negotiations with its lenders, suppliers, and labor, and it continues the process of a total reorganization of its operations.

ADMINISTRATIVE EXPENSES

Mr. Chairman, the administration requests an appropriation for fiscal year 1982 of $1.356 million, including funding for permanent positions to enable the Board to administer the loan guarantee program established by the Guarantee Act. A supplemental appropriation of $29,000 in fiscal year 1981 for the October pay raise increases is also being sought. As you know, our approach to this program is to seek appropriations for administrative expenses only on an annual basis, because of the program's temporary nature.

These funds and positions are necessary to maintain the Office of Chrysler Finance and related support activities in the Treasury Department. The Loan Guarantee Board requires staff assistance and other services to satisfy its responsibilities under the act. Those responsibilities include negotiations relating to the guaranteed and unguaranteed por-

tions of Chrysler's 4-year operating plan, financing plan, and other plans necessary for the Board to make the determinations required by the act in order to insure guarantees; and preparation of annual reports to Congress concerning its activities.

CONSULTING SERVICES

These responsibilities will continue throughout the entire period that guarantee commitments and guaranteed loans are outstanding. The expertise necessary will continue to require contractual services from the private sector as well. Specifically, we have employed the public accounting and management consulting firm of Ernst & Whinney to help us analyze and evaluate Chrysler's current status and its operating plans. We also employ, as needed, the law firm of Cahill, Gordon & Reindel to help us prepare the legal documents and review legal issues incident to the financing transaction, including security arrangements.

Our appropriation for these administrative purposes for fiscal year 1980 was approximately $1.5 million and 20 permanent positions. For the current fiscal year 1981, the Office of Chrysler Finance has an anticipated appropriation of $1,349,000 and 17 permanent positions. In fiscal year 1982, we are requesting $1,356,000 and 17 permanent positions.

Our reliance on outside experts has been diminishing and will continue to do so. In fiscal year 1980, approximately $1.2 million of the $1.5 million budgeted was obligated for the cost of consultants. In fiscal year 1981, approximately $750,000 of the $1.349 million budgeted will be used for consultants' fees. In fiscal year 1982, we will be able to hold our budget for consultants to the fiscal year 1981 level of $750,000. By increasing staff responsibilities we have been able to reduce our budget for consultants by nearly $425,000 from fiscal year 1980, and expect to be able to continue to analyze and evaluate Chrysler's operating and financing plans, as well as its continuing reorganization and capital infusion efforts at that reduced funding level. Thus, for fiscal year 1982, approximately $460,000 is budgeted for internal staffing and $750,000 is budgeted for consultants with the remaining $146,000 for incidental expenditures.

INTERNAL STAFFING

Of the 17 authorized internal positions, 13 permanent positions—let me emphasize when I say permanent positions, I mean civil service positions, as opposed to the ones that will continue forever—of which 10 are currently filled, are in the Office of Chrysler Finance, four permanent positions, of which two are filled, are held by the General Counsel's office. The positions in the Office of Chrysler Finance are divided equally among the individuals responsible for analysis of Chrysler's operating plan and among those responsible for analysis of its financing plan.

LOAN GUARANTEE FEES

On a related matter, I would like to remind the committee that the authorizing legislation for this program requires the Loan Guarantee Board to collect a guarantee fee from Chrysler to cover its administrative costs. Currently at 1 percent of the outstanding guaranteed loans, the U.S. Treasury has been paid $3,871,585 by the company since last

July. For the period covered by the appropriation we are seeking today, we estimate that Chrysler's guarantee fee will be approximately $12 million. These receipts go to the general fund, of course, and not to the Office of Chrysler Finance. Nevertheless, there is no net administrative cost to the Government for this program.

I will be pleased to answer any questions you might have.

Senator WEICKER. That, of course, is assuming that Chrysler survives.

Mr. MCNAMAR. That is assuming Chrysler survives.

Senator WEICKER. But there will be no administrative costs incurred.

Mr. MCNAMAR. Indeed.

LEVEL OF FISCAL YEAR 1982 REQUEST

Senator WEICKER. Mr. Secretary, I notice on page 2 where you state: "For the current year fiscal year 1981, the Office of Chrysler Finance has an anticipated appropriation of $1,349,000 and 17 permanent positions. In fiscal year 1982, we are requesting $1,356,000 and 17 permanent positions."

Why is there not a decline in personnel by fiscal year 1982?

Mr. MCNAMAR. There are several reasons for that. The first is the set of reports that we have to issue to the Congress which will require us to continue to monitor Chrysler Corp. As you probably know, we receive monthly reports from them and meet with the executives of Chrysler regularly. We have to maintain that surveillance, if you will, both surveillance in a financial and analytical sense and legally, or we would not be in a position were they to come back and ask for the remaining guarantee to be up to speed to make that decision on an expeditious basis. In other words, if we simply got out of the business, we would have to restart from zero, and we would have no one who would know enough about Chrysler to serve as a professional staff on the Loan Guarantee Board.

But I would make a comment in that regard, though. On the assumption that Chrysler will not be back, I would anticipate we should have some lapse of money in the budget. We are in a difficult situation here in that if money were not appropriated, we would be authorized to make the loan guarantee, Chrysler would come in to exercise its entitlement, if you will, and we would have no appropriated funds in advance, so we would not be able to make the staff work to do the finding to give the authorization. It is a Catch-22 situation, and I suggest it is one of those occasions where lapsing money might end up being the appropriate thing to do.

USE OF CONSULTANTS

Senator WEICKER. Aside from the accountants, Ernst & Whinney and Cahill, Gordon & Reindel as attorneys, what outside consultants, are necessary?

Mr. MCNAMAR. They have been the principal ones.

Mr. DRIGGS. The only ones.

Mr. MCNAMAR. They have used subcontractors, have they not?

Mr. DRIGGS. In the fall of 1979, when the program was first started, there were two individuals who were retained as consultants. John

Secreast, a retired executive vice president of American Motors Corp., who has since joined the staff of the Office of Chrysler Finance, if you will, as an in-house consultant, and Professor Kennedy from the University of Michigan, an expert in bankruptcy law. Professor Kennedy is no longer retained as a consultant. So the only consulting contracts we now have are with the two firms Cahill, Gordon & Reindel and Ernst & Whinney.

Mr. McNAMAR. I might also add in that regard, if Chrysler does not come back or if we were to make a finding that we would not issue additional guarantees, we obviously would not incur the legal costs for the preparation of a massive number of documents. Therefore, the Cahill, Gordon & Reindel fees will be much lower.

INVESTMENT COMMUNITY ADVICE

Senator WEICKER. Have you never felt it necessary either in-house or on a consulting basis to have the advice of the investment community? By that I would include banks, investment houses, et cetera? Do they not have something to do with this?

Mr. McNAMAR. We have regular consultations with the syndicate of banks who have made loans to Chrysler prior to the time the Government became involved. So I think we get a steady stream of that.

RECENT LOAN GUARANTEES

Senator WEICKER. If I am not mistaken, was not another portion of the loan just recently approved in the past week or so?

Mr. McNAMAR. Yes; actually the $400 million was granted on January 19. The decision was made on January 19, and then on February 27, that decision was affirmed by the Board, indicating that the 21 conditions that were required to be met had been met and that there were no significant or material changes in Chrysler's situation between the finding of the Loan Guarantee Board on the 19th of January and on the 27th.

WAIVERS GRANTED TO CHRYSLER

Senator WEICKER. Mr. Secretary, on January 19, the Chrysler Corp. submitted a request for the issuance of additional loan guarantees up to $400 million in principal amount of indebtedness. At its January 19 meeting the Board approved a new 4-year financing plan and a new 4-year operating plan incorporating revised projections for Chrysler. At that same meeting, the Board approved a number of waivers, requested by Chrysler, of the Agreement to Guarantee dated May 15, 1980 and the Procedures Memorandum dated June 24, 1980. These include waivers of financial reporting requirements, waiver of explanations by Chrysler of the inadequacy of its earlier operating plan and loss projections, waiver of the prohibition against Chrysler's incurring additional debt by postponing payment to suppliers, waiver of conditions for default, and so on.

Mr. Secretary, these waivers concern me in several ways: First, how do the waivers effect the statutory protections of the Federal investment contained in the Loan Guarantee Act approved by Congress? Without these waivers, would Chrysler's violations of the act's requirements have

constituted a default of the $800 million in Federal loan guarantees previously approved by the Board?

Mr. MCNAMAR. These waivers concerned me when I came to the Treasury Department as well, and I was concerned about what they were. I have satisfied myself after looking at them that they were all of a technical nature. I think what had been done was that some of the—and I don't mean this as a criticism of the previous administration—but some of the standards and operating procedures and things that we had put in from the Treasury were simply too strict and too stringent in terms of the technical requirements of getting the analysis made, and were these waivers not granted, Chrysler would have been in technical default when, in fact, they were making substantive compliance with the act. I can assure you, Mr. Chairman, these waivers were of technical nature and there was no dimunition of protection that the Congress required in the act.

QUALITY OF CHRYSLER'S COOPERATION

Senator WEICKER. Second, has Chrysler or its advisors provided the Board with adequate, reliable and timely information to assess the viability of Chrysler, and the feasibility of its long-term prospects for recovery?

Mr. MCNAMAR. Yes, they have. They have provided us with a great deal of information. It has been on a most cooperative basis because they obviously have an interest in seeing the Board approve the loan. I think they have made an excellent good faith effort providing everything we have asked for.

NEED FOR MORE WAIVERS

Senator WEICKER. Would it be correct for me to assume that these waivers have been granted. I do not want to hear a month from now that there have been more waivers issued. Are we through with that?

Mr. MCNAMAR. To the best of my knowledge, I think we should be, unless anybody is aware of anything else. The staff has informed me we should be finished with these. I think I can give you some assurance in that regard. Having now been involved in one of these efforts, they are massive, massive problems of documentation and simply reviewing all the conditions that the Board has set down and making sure they have been met. The paper work is simply overwhelming.

ADDITIONAL LOAN GUARANTEES

Senator WEICKER. As you know, I have led the fight against these loans, I would only hope—you are not getting cranked up for a little more activity in the future with anybody else?

Mr. MCNAMAR. I have read in the newspaper that some people have suggested some activity. The Treasury is certainly not set on any activity for anyone else and I think that the Treasury has made it rather clear to Chrysler management that we look forward to seeing them on a lot of social occasions and we do not look forward to seeing them on any business deals. It is solely their responsibility to bring the company through. They have made significant progress. It is an entirely different

company than it was 2 years ago, both the attitudes of the management, the product platforms, the cars that they have. They have made excellent improvement in all those ways that they position themselves in the marketplace. We think there is a very, very reasonable prospect that we will only have a social relationship with them.

CHRYSLER'S VIABILITY

Senator WEICKER. I certainly would not mind being proven wrong on this one.

Mr. Secretary, section 5(a)(2) of the act provides that the Board may issue loan guarantees under the act only if, at the time of issuance, the Board determines that "The prospective earning power of the corporation, together with the character and value of the security pledged, furnished reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms."

In approving the issuance of an additional $400 million in loan guarantees pursuant to Chrysler's January request for the third takedown, the Board determined that the requirements of section 5(a)(2) would be met. However, Touche Ross and Co., Chrysler's auditors, declined to express an opinion on Chrysler's 1980 financial statements because they could not determine whether Chrysler should be considered a going concern.

How has the Board determined that Chrysler will continue operations as a going concern in the automobile business and will continue such operations after December 31, 1983, without additional loan guarantees or other Federal financing, and with the ability to repay its debt, including the loans to be guaranteed, as they become due in the years after 1983? Simply put, is Chrysler a going concern? And if it is, what is your opinion, or if it is not your opinion, why would that differ in the declamation of Touche Ross in the position of saying that it is a going concern?

Mr. MCNAMAR. Mr. Chairman, I think that we have here is a difference between the standards that are required in the legislation, the act itself and the standards in the accounting profession. A going concern is a term of art that is used in the accounting profession and the fact that they did not say that does not indicate Chrysler is not viable within the meaning the act in section 5(a)(2) at all.

Senator WEICKER. It is just the accounting firm does not want to be held liable?

Mr. MCNAMAR. I would suggest some of the law suits that have taken place in recent years against the accounting firms, particularly one against Touche Ross of which I am aware in San Diego, probably caused their counsel to suggest to them that they should be quite careful. But if we or they had concluded that it is not a going concern, they would have issued an adverse opinion which, again, is a term of art that would be used in the accounting profession. That would be the standards that they would use.

REVISIONS TO OPERATING AND FINANCING PLANS

Senator WEICKER. Mr. Secretary, the Board has approved revised 4-year financing and operating plans for Chrysler. These revisions reflect the significant inadequacy of earlier projections. In 1980, Chrysler suffered a loss of $1.774 billion compared with a 1980 loss estimate of $1.039 billion in the July 10, 1980, operating plan. The current January 14, 1981, operating plan projects a loss of $235 million compared with a 1982 profit estimate of $247 million in the July 1980 plan. In light of these rapidly changing projections, would you please assess the risks of not attaining revised plan goals for 1981.

Mr. MCNAMAR. I think that we have to look at the domestic automobile industry as it existed during 1980, which was the reason they did not make—one of the reasons they did not make those original goals. It is one of the most depressed industries in terms of sales at the present time that we have.

Their sales are substantially below the long-term trends in the industry for all automobile manufacturers. And Chrysler has suffered that with the rest of the industry.

In addition, the earlier projections that the company made, I think, did not reflect the degree of realism that management has today in terms of recognizing exactly where it was. And I think that is well evidenced in the steps management has taken in the interim, including those original projections and today.

They have been through two massive reorganizations. They have closed down a substantial amount of unprofitable, underutilized, inefficient capacity. I think we feel that the plans are definitely reasonable and feasible. In fact, there is a cash balance, cash reserve that we have in for the end of the year. So we feel they have a good chance of making it. A lot of it, I might add, Mr. Chairman, will depend on how quickly we can get the interest rates down in this country and, of course, as you know better than anyone else, that will require prompt action of the Congress on the President's economic plan. I think there is probably nothing more we can do for the domestic automobile industry than have the President's economic program acted on.

Senator WEICKER. Did Mr. Stockman ask you to make that little speech?

Mr. MCNAMAR. Actually, I am one of those people who thinks Mr. Stockman is soft on the budget.

ADDITIONAL CAPITAL INFUSION

Senator WEICKER. Mr. Secretary, Chrylser's statement to shareholders dated February 27, 1981, reveals that, "while the company is investigating the possibilities for additional capital infusion, including mergers and joint ventures, successful implementation of the company's plan will permit Chrysler to survive and be competitive on its own."

First, what, in the Board's determination, are the prospects for a new infusion of capital into Chrysler and, second, is the future of Chrysler as a going concern dependent on an infusion of additional capital?

Mr. MCNAMAR. If I may answer the second question first, no it is not.

As to the first question, which I think is the more important one, we have made it very clear to Chrysler management that we expect them to actively seek some sort of an infusion of capital, whether that is through a business combination of some type or other. It is their responsibility to do that. It is not the Government's responsibility to do that. I think we have made that point very forcefully to them.

I would say that Chrysler today and, again, contrasting it with 2 years ago when this program began, Chrysler today is a much more attractive candidate for capital infusion than it has been. And in part the conditions of the recent restructuring, which substantially improved the debt side of their balance sheet, make it a much more attractive company.

CHRYSLER'S SURVIVAL

Senator WEICKER. Last, how confident is the Board that Chrysler can survive under the revised operating financial plans without additional loan guarantees or other Federal financing?

Mr. MCNAMAR. We think there is an excellent chance that Chrysler without additional financing internally or externally will be able to survive, and we just expect to see them on a social basis.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I have questions here from Senator Hollings which will be submitted for the record and be answered for the record.

Mr. MCNAMAR. We will be delighted.

Senator WEICKER. Senator Rudman?

Senator RUDMAN. I don't have any questions, Mr. Chairman.

Senator WEICKER. Thank you very much, Mr. Secretary.

[The following questions were not asked at the hearing but were submitted to the Board for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

ADMINISTRATIVE COSTS

Question. To what extent, if any, has there been some participation by the other Chrysler Loan Guarantee Board members in paying the costs of administering the Chrysler Corporation Loan Guarantee Act?

Answer. The other Loan Guarantee Board members have contributed staff time to support the efforts of the Board. Both the Federal Reserve System and the General Accounting Office have provided one full-time analyst on a nonreimbursable basis since May and June 1980, respectively. The GAO, through its Detroit regional office, has also conducted nonreimbursable valuations of Chrysler's assets pledged as collateral to the Government. Those reports have been a key element of the Board's security findings.

LOAN GUARANTEE FEES

Question. How is the 1 percent guarantee fee collected?

Answer. Payments of the guarantee fee are made by Chrysler on a quarterly basis. The payments are made on the fifteenth day of the months January, April, July, and October for the preceding 3 calendar months. The most recent payment, for example, was made January 15, 1981, for the period from October 1, 1980, through December 31, 1980. Using the Federal Reserve System, funds are wired on the payment date from Chrysler's account with Manufacturer's Hanover Trust Co. in New York, N.Y., to the Federal Reserve Bank in New York for the account of the U.S. Treasury.

The fee is 1 per centum per annum of the outstanding principal amount of the loans guaranteed under the act, based upon the actual number of days in the year. In 1980, the amount was based upon 366 days. In 1981 it will be based upon 365 days. Each

payment is calculated by multiplying the weighted daily average of the amount of the loans outstanding in the period by the daily rate, and multiplying this product by the number of days in the period. The daily rate is calculated by dividing the 1 percent by the number of days in the year.

Staffing Level

Question. In your statement you note that 5 of the 17 authorized permanent positions are now vacant. Are you satisfied that 12 positions are providing adequate surveillance over Chrysler, and if so, could we reduce the staffing permanently to 12?

Answer. We believe that it would be unwise to reduce the staffing level of the office at this time. The vacancies result from a combination of normal attrition in an office and our deliberate policy of moving slowly to staff the Chrysler project. Many things could yet happen to the corporation which would require full staffing to enable the Loan Guarantee Board to deal adequately with the issue. Two examples that come to mind are a further deterioriation in the company's financial condition or proposals for merger or extensive joint venture activities.

Government's Purchase of Automobiles

Question. In view of the overall horrible condition of the American automobile industry, is the administration considering a substantial replacement of automobiles, particularly for law enforcement agencies?

Answer. The Treasury is not responsible for administration policy in this area. Nevertheless, conversations with the relevant agencies (GSA and Defense) have revealed the following information.

The Carter administration had requested, as part of its economic stimulus package, an appropriation for $119 million in additional GSA automobile purchases over an original budget of $72 million. This measure was not approved by the 96th Congress. This $119 million has now been proposed as a supplemental appropriation for fiscal year 1981. The measure is currently before Congress.

In addition, the Department of the Army is seeking a supplemental appropriation of $88 million for fiscal 1981 and an appropriation of $108 million for fiscal 1982. The original budget request for these years was $17 million and zero respectively. These funds, if approved, are for the purchase of administrative use vehicles.

More detail on these requests can be best obtained by contacting the appropriate officials at GSA and Department of Defense.

INTERNATIONAL TRADE COMMISSION

STATEMENT OF BILL ALBERGER, CHAIRMAN

ACCOMPANIED BY:

MICHAEL CALHOUN, VICE CHAIRMAN
EDWARD C. WALLINGTON, JR., DIRECTOR OF ADMINISTRATION
PHILIP H. KATZ, ACTING CHIEF, FINANCE AND BUDGET DIVISION

BUDGET REQUEST

Senator WEICKER. Our next request is that of the International Trade Commission. The amount requested is $18,501,000, an increase of $790,000 over the fiscal year 1982 base, and provides 438 positions, unchanged from the prior year.

Appearing on behalf of this request is Chairman Bill Alberger, who is accompanied by Vice Chairman Michael Calhoun, Edward C. Wallington, Jr., Director of Administration and Philip Katz, Acting Chief, Finance and Budget Division. Chairman Alberger. We will be pleased to hear your statement with regard to this request.

PREPARED STATEMENT

Mr. ALBERGER. Thank you, Mr. Chairman. I have a prepared statement which I will not read and hope it can be entered into the record.

Senator WEICKER. Your statement will be included in its entirety in the record at this point.

[The statement follows:]

Statement of Bill Alberger

Mr. Chairman and members of the Subcommittee: I am pleased to meet with you to discuss the Commission's budget request for FY 1982. I am accompanied by Michael Calhoun, our Vice Chairman, Edward Wallington, our Director of Administration, and Philip Katz, Acting Chief of our Finance & Budget Division. Other staff members are also present.

While recognizing the need to assure adequate funding to support what has been an expanding mission, the Commission has strongly emphasized the need for fiscal restraint in developing this budget request. The FY 1982 request for $18,501,000 is only $790,000, or less than 4-1/2 percent, higher than the FY 1981 appropriation, including the pending supplemental appropriation for pay increases. Over one-half of this increase is for built-in cost changes such as within-grade increases and provision for a full complement of Commissioners, and for the effects of inflation.

During my three and a half years of service on the Commission we have consistently developed budgets that I have felt were lean. Our responsibilities for knowledgeable contributions have increased significantly during the Multilateral Trade Negotiations and with the passage of the Trade Agreements Act of 1979. We have charted a course that has allowed us to forego major staff increases, as other agencies in international trade have undergone, yet we have produced what we trust has been a high quality of work on an ever increasing number of investigations. In fact, the FY 1982 budget request provides for only 12 more positions than we were authorized at the close of FY 1976 and is the same number (438) provided for FY 1980 and 1981. There has been growth in the Commission's total dollar budget during this time, but this has resulted primarily from the impact of inflation, general pay increases, and special factors such as the approximate doubling of GSA's rental (SLUC) charges.

As an agency with responsibilities for conducting a variety of investigations upon petition by domestic industry representatives, labor unions, and now foreign governments and importers, as well as upon requests from the President or the Congress, we have limited control over the volume of our workload. We must be staffed with broad based commodity expertise, as well as economic, investigative, legal, and accounting skills necessary to handle all investigations within the limited statutory time frames. Thus, we

must have a staff with a size and flexibility sufficient to carry out even more investigations than we expect. Statutorily mandated, import related investigations continue to comprise the largest segment of our workload, and we prepared this budget with the knowledge that the Congress continues to expect us to carry out these investigations in a thorough and timely manner.

We also conduct a number of projects of overriding importance to U. S. trade and tariff administration. One of the major programs currently underway is our work pursuant to the Trade Act of 1974 on the Harmonized Commodity Code now being negotiated in Brussels. This is the largest nomenclature-related activity undertaken by the Commission since formulation of the revised TSUS in 1962. Since January 1975, the Commission has prepared comments on 77 chapters of the Harmonized System. Commission representatives have participated as members of the U. S. delegatic to the Harmonized System Committee at all sessions of the Committee. Input has been actively solicited and received from domestic industry groups in a continuing effort to insure that the negotiated results meet U. S. needs. Currently, the Commission's staff is aligning the Tariff Schedules into the format of the Harmonized System in order to identify potential complications and technical inaccuracies. These alignments, along with comments received from industry, will be used as the basis for U. S. input into the review sessions which will take place this year, and is the foundation for a formal conversion of the TSUSA into the format of the Harmonized System. We understand the Trade Policy Staff Committee (TPSC) is considering a request to the Commission for such a conversion during 1981. The Commission expects a conversion project, which would include public hearings, to take two years and has budgeted 13 work-years toward this endeavor in FY 1982.

The Commission also conducts a variety of investigations pursuant to Section 332 of the Tariff Act of 1930 which are an essential part of our service to the Congress and the Executive. We believe that the broad scope of topics now under study will prove invaluable to those who formulate our trade policies. These studies bring our commodity and economic expertise to bear on a number of isolated trade issues and provide a sound body of factual material to put at the disposal of those responsible for implementing trade policy. For example, we are studying the effects on U. S. trade of the expansion of the E.E.C., the impact of the Multifiber Arrangement, and the effects of Foreign Export Restraints. In addition, we continue to respond to Executive

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or Congressional requests for sectoral studies relating to conditions of competition. Any self-initiated studies are discussed with Congressional staff first to determine interest and feasibility.

The Commission has, since the enactment of the Trade Act of 1974, steadily increased its concentration on trade-related developments in other countries and other matters affecting U. S. exports, without reducing the attention given to its traditional areas of responsibility. The Commission's growing development of trade monitoring capabilities and concern with non-tariff barriers are examples of this broader range of program emphasis. Our expertise seems to be in greater demand by the USTR, Commerce and the Congress. We recognize the need to expand and develop this expertise in new areas of concern in international trade, such as trade in services, and are working with congressional staff members and staff at other agencies to identify subjects of maximum interest to trade policymakers. Our overall approach is toward early recognition and analysis of critical trade areas so that we will be better able to supply the policymakers with timely information and assistance.

In the budget preparation process this year, I proposed and my colleagues approved, significant program reductions or eliminations. I did this because it was the responsible thing to do, and I took the necessary steps to implement these changes in FY 1981, not FY 1982. These savings have allowed us to shift resources to meet new responsibilities. For example, we have eliminated the cost-ineffective New York Office. Three positions previously assigned to that office have been transferred to Washington. We have also eliminated a long time program of extracting detailed information from documents representing a 1% sample of all Customs entries.

The savings achieved through these program eliminations have been used to support the Commission's new Trade Monitoring Information Support System. This system of compiling and maintaining trade data for some 2,500 major commodity areas greatly expands the information the Commission is able to make available to the nation's trade policymakers. It also provides a comprehensive and standardized data base to support the Commission's analytical and investigative responsibilities. We have never requested additional funds for this new program but have provided for it through the reductions mentioned above.

It is our understanding that other agencies have received funding targeted for development of a trade monitoring system, and have met with little, if any, success. As an independent agency, we are quite conscious of the need to avoid duplication of trade services and functions, and thus are taking all necessary steps to insure that our new system will be available and of maximum benefit to the Congress and the Executive Branch. In this ongoing effort to limit duplication, I have urged other agencies and Congressional Committees in the trade field to tap our staff expertise rather than duplicate it in their own shops. This is another area where we are doing everything we can to help save government monies.

The Commission must have the flexibility to shift resources between programs in response to fluctuations in cases filed, rather than trying to add or eliminate staff with each project initiated or completed. For example, we initially projected an FY 1982 reduction in our work on countervailing duty investigations on the then reasonable assumption that much of the task of reviewing outstanding countervailing duty cases would be completed in FY 1981. Since the information required to initiate these investigations has not yet been received from the Department of Commerce, it now seems possible that more work will need to be done in FY 1982 and less in FY 1981. Rather than adjust staff to these uncontrollable workload requirements, the Commission makes increases or decreases in the resources which it allocates to activities, such as Section 332 studies, which are subject to some internal control.

The Commission has closely examined its needs, using zero base budgeting techniques. We believe that the projection of workload used to develop this budget request is reasonable. We believe that our request provides for the resources necessary to meet the growing demand for Commission services and also reflects the national need for fiscal restraint.

STAFF EXPERTISE

Mr. ALBERGER. I would like to highlight a few key items. We believe we come before you with a modest budget request, an increase of a little less than 4½ percent of the 1981 appropriations plus the pay supplemental. From fiscal year 1979 to fiscal year 1980, our caseload at the Commission more than doubled. This was due to the major impact of the Trade Agreements Act of 1979 and so far in fiscal year 1981, we show no sign of a decline in the caseload. We have vastly expanded responsibilities at the Commission since the Trade Act of 1974 when our name was changed from the Tariff Commission to the U.S. International Trade Commission.

We have had to expand the expertise of our commodity analysts to make them world commodity experts. They knew imports; now they know exports as well. We have had to look at competitiveness as well as sensitivity to imports. We were given specific statutory mandates to produce quarterly reports on East-West trade, annual reports on the operation of the trade agreements program, numerous requests for other reports requiring knowledge and understanding beyond tariff expertise, such as the vast studies we did on the multilateral trade negotiations for the Congress in 1978–79, a recent study on the multifiber arrangements, and major reports we did for the U.S. Trade Representative recently on the petrochemicals industry in this hemisphere and the North American trade agreements report.

Trade problems are changing quickly and they are growing. As an independent, nonpartisan, fact-finding agency, we are finding an increasing demand for our staff's expertise. New major issues involving nontariff barriers and, most recently, trade in services have surfaced. We are not experts in services issues, but there are not very many experts in services issues in the U.S. Government.

Ambassador Brock recently addressed the need for our consideration of certain services issues in attempting to negotiate reductions of barriers to trade. And in discussions with Senators on the Subcommittee on Trade of the Senate Finance Committee, we have been asked to help assess the impact on U.S. employment patterns of basic structural shifts away from manufacturing industries toward services industries.

ECONOMIZING

Faced with this kind of growing demand for our services, both in the form of petitions for relief filed by domestic industries, labor unions and in some cases even by foreign governments, and in the form of requests from our congressional oversight committees and the executive branch, we have tried very hard to economize and do more with less. We believe we have been quite successful in this regard.

As the graph I submitted with my testimony indicates, the highest line is the increase in our investigative caseload. The second highest is the reports published by the Commission. The lowest is the Commission's budget growth.

In the fiscal year 1982 budget process in the Commission we found specific ways to economize. We found items in our budget we did not believe were cost effective and we terminated them in fiscal year 1981

without waiting for fiscal year 1982. There were two specific items, one was the New York office that had been expanded back in 1975 and had not been found to be cost effective; we scaled it right back.

The other is a 1-percent sampling of all customs documents which has been going on at the Commission for some years. We found there were better ways to accomplish what little we were accomplishing out of that program, and we terminated the program. We also held travel constant despite a 50-percent increase in per diem costs and big jumps in air fares, which I am sure you are all as well aware of as we are.

There is a great problem in saving more on our budget because we have no control over the timing and quantity of cases filed nor any control over requests for assistance we receive from the Congress or the executive branch. We must be prepared with the necessary expertise to handle all cases within very strict statutory timeframes, 45-day cases, some 30-day cases, 6-month cases, some up to 1-year cases.

All of these are very short timeframes. They are deadlines that must be and are met. In order to be certain our commodity experts have certain skills and knowledge, we require them to keep current on the products and periodically publish the results of their research, as summaries of trade information. We consult with staffs on our oversight committees and with USTR, the contact point in the executive branch, to determine areas of critical concern where our expertise can produce special studies of maximum benefit to the policymakers.

TRADE MONITORING SYSTEM

In one specific instance we developed a new trade monitoring system which was done last year. We keep watch on imports and exports in 2,500 commodity groups and monitor trade flows by source and target country.

Other agencies throughout the Government have been funded to develop something like this. They have not succeeded. We did it without specific funding and we are working to make the output of maximum utility to all trade policymakers throughout the Government.

One of our major efforts is for cooperation and sincere efforts to avoid duplication of trade expertise because there are so many agencies that have specific responsibilities in the trade area.

HARMONIZED COMMODITY CODE

I would like to also indicate one of our major projects which has been ongoing since 1975, the harmonized commodity code being negotiated in Brussels. It is the largest nomenclature-related activity undertaken by the Commission since formulation of the revised Tariff Schedule of the United States back in 1962.

Since January 1975, the Commission has prepared comments on 77 chapters of the harmonized system. The Commission representatives have participated as members of the U.S. delegation to the Harmonized System Committee. Input has been actively solicited and received from domestic industry groups in a continuing effort to insure that negotiated results meet U S. needs.

Currently, the Commission's staff is alineing the tariff schedules into

the format of the Harmonized System in order to identify potential complications and technical inaccuracies. These alinements, along with comments received from industry, will be used as the basis for U.S. input into the review sessions which will take place this year, and is the foundation for a formal conversion of the TSUSA into the format of the Harmonized System.

We understand the Trade Policy Staff Committee is currently considering a request to the Commission for such a conversion, beginning in 1981. The Commission expects the conversion project, which will include public hearings, to take 2 years and has budgeted 13 work-years toward this endeavor in 1982. We will be pleased to attempt to answer any of your questions.

IMPACT OF AUTO IMPORTS

Senator WEICKER. Last June, the UAW and the Ford Motor Co. petitioned the Commission to determine the extent of damage under section 201 of the Trade Act that Japanese and other auto importers have caused the auto industry. Briefly, what were the results of your findings?

Mr. ALBERGER. The Commission found specifically that imports of automobiles and imports of light trucks were increasing. Imports of heavy trucks were not increasing.

We found that the domestic industry producing automobiles and the domestic industry producing light trucks were seriously injured. We found increased imports were not a substantial cause of serious injury to either domestic industry.

In other words, there were causes that were at least as important or more important than increased imports for the serious injury we found to exist.

Senator WEICKER. And what were those other causes?

Mr. ALBERGER. In the case of my own opinion, there was one other cause that I believe was more important, and that was declining demand for automobiles and a declining demand for light trucks. In the case of my colleagues, it also included a shift from large cars to small cars. These were the most important causes of the serious injury we all found to exist.

Senator WEICKER. Do you get into areas of quality, or the perception of quality of the automobile? Do you get into areas of fuel efficiency?

Mr. ALBERGER. Those are contributing subfactors, certainly, in terms of demand for cars. If you don't perceive the quality is that good, you may not purchase at all or you may purchase something else.

But as far as my own view of the way the statute operates, if the quality perception is such that you purchase an import, then that would count on the side of imports as far as which is the most important cause of injury.

I think the statute does operate so that if imports are the most important factor no matter how they got there, we consider them a substantial cause.

Senator WEICKER. You studied this in June, is that correct?

Mr. ALBERGER. The investigation began in June, and we completed our findings in November and reported to the President right around the first of December.

Senator WEICKER. So we are only around 3 months away from your report.

Mr. ALBERGER. Yes.

Senator WEICKER. Yet I read in the newspapers every day this whole issue is being debated within the administration again.

Mr. ALBERGER. Yes.

Senator WEICKER. Do you think your views would differ markedly at this point to those you expressed in December?

Mr. ALBERGER. It is difficult to say without looking at the actual data. I personally would be surprised if they differ much. I should indicate that while our finding was specific in terms of the statute, it did not mean that we did not find increased imports were a problem for the industry. We did find that they were an important cause of injury, but not in terms of the statute's most important cause.

Senator WEICKER. Have you and the members of your Commission been consulted at all by the administration?

Mr. ALBERGER. Formally we have not; informally, extensively. Our staff has been providing a great amount of information to the executive branch and also to the Congress.

AFFECT OF BUDGET CUT

Senator WEICKER. We anticipate OMB will recommend a 5- to 10-percent across-the-board cut for all independent agencies other than those targeted for greater cuts.

Knowing that you are exempt from the Budget and Accounting Act under section 175 of the Trade Act of 1974, how would such a decrease affect your operational capabilities?

Mr. ALBERGER. It could have a major impact because we don't really have control over the caseload we get. It largely comes to us by petition from outside. Of course, we have numerous requests from the executive branch and the Congress for assistance. If we are forced to scale back very much, what we are probably reducing is the quality of staff work we would have on investigations because we would have fewer people assigned to those investigations. If we have to scale back very much, we would have to, in the area of commodity expertise, for example, require our commodity experts to broaden their expertise over a wider range of commodities without having that specific expertise on a number of commodities.

I think that would lead to a lessening of the quality of work we would be able to perform.

SYSTEMS FURNITURE

Senator WEICKER. Why have the costs of the administration at the Commission increased by 35 percent from fiscal year 1980 to the level requested in fiscal year 1982?

Mr. ALBERGER. This is primarily an accounting change that the Commission made. Twenty-two percent of that 35 percent increase is accounted for by the cost of furniture which we used to spread out over all activities. We showed the fiscal year 1982 total increase as one item. That relates to our overall effort to move the Commission staff, as

many as possible, into our central building at 7th and E Street, NW. And we are using systems furniture to help accomplish that. We have just begun that project.

There is a large chunk of money in the fiscal year 1982 budget which accounts for 22 percent, I think it is, of that 35-percent increase.

Senator WEICKER. Are you talking about the furniture?

Mr. ALBERGER. It accounts for 22 percent of that 35 percent.

Senator WEICKER. Because you are moving.

Mr. ALBERGER. Because we are trying to go to systems furniture and systems furniture is not cheap.

Senator WEICKER. What is systems furniture?

Mr. ALBERGER. We are talking about—you mean the company?

Senator WEICKER. No; I don't understand what systems furniture is.

Mr. ALBERGER. I am sorry. Systems furniture is a modular furniture concept where you are trying to cut down on the noise and move more people into a more compact space. It is an efficient arrangement of the desk operation so that things are all within hand reach, drawers, and files are very close by.

Mr. CALHOUN. It increases the per person density in a particular area.

Senator WEICKER. Do you think that is good?

Mr. ALBERGER. It is intended——

Senator WEICKER. I don't think it is too good, I will tell you that. Pretty soon you will be sitting on each person's lap——

Mr. WALLINGTON. Our rooms are not too different in size from this one. When you start putting a number of people in a room this size without any breakup of the room, they are in each other's laps, listening to each other's phone calls. Systems furniture has high partitions, in some instances, a lot of built-in arrangements where you can make a room this size usable for, say, four people where two might be a maximum without the breakup of space by the special furniture.

Senator WEICKER. In several of the Senate offices, the same thing has been done there.

Mr. ALBERGER. Senator Hatfield, I believe, was the original model in the Senate for systems furniture. In fact, we are using the same company that did his office.

Senator WEICKER. I will tell you one thing, though, if you go around to all the Senators' offices, regardless of whoever they are, you won't find systems furniture in the Senators' offices. You see a business desk and a big room.

Mr. ALBERGER. For good reason.

COMMISSIONERS TRAVEL

Senator WEICKER. Would you provide, for the record, a list of travel expenditures by Commissioners and their staffs in the last 2 fiscal years?

Mr. ALBERGER. Yes; we certainly will.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I have further questions of my own and Senator Hollings, which I will submit to you for response to the record.

Senator Rudman?

Senator RUDMAN. Thank you, Senator.

I don't have any questions.

Senator WEICKER. Gentlemen, thank you very, very much.

[The following questions were not asked at the hearing but were submitted to the Commission for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Question 1:Supplemental FY '81 Pay Increase Absorption Rate

In your 1981 Supplemental request of $996,000 for October 1980 pay increases, how much of the increase will be absorbed by the Commission?

NOTE: Government-wide the absorption rate of the October pay increase has been between 20 and 25 percent.

Answer

The 1981 Supplemental request submitted by the Commission did not provide for any absorption by the Commission. It has been the practice for some years to discuss specific absorption with the Appropriations Committee in each House at the time, usually late Spring, that the Committees are processing Supplementals for all agencies.

Rather than commit to a specific figure at this time, the Commission feels that development of a specific absorption commitment should be suspended until the Appropriation Committees are processing the Supplemental Bill. I am confident that the Commission will be able to absorb an amount at least equal to the 20-25% rate indicated for the Government as a whole. This absorption will be made possible by savings from position vacancies and other cost avoidances.

Question 2: Largest Single Budget Increase: Summaries of Trade and Tariff Information

The largest single increase in the Commission's appropriations request is for summaries of trade and tariff information. What is the basis for this requested increase? Are the industries studied trade sensitive or are they randomly selected? How many years will it take for the summaries program to be completed? Is the information kept current? Who uses the summaries?

If the summaries program were eliminated could the number of employees be reduced? Would the remaining employees then have more time to acquire expertise with respect to a broader range of commodities?

Answer

The Commission approved the reinstitution of the Summaries program in calendar year 1977, but because of statutory and other work demands the program was implemented only to a limited degree through fiscal-year 1979. Activities such as the work the Commission did for the Senate Committee on Finance and the House Committee on Ways & Means on the results of the Multilateral Trade Negotiations, various probable economic effects investigations for USTR and other 332 investigations made a significant commitment of resources to this project impossible during that period of time. The Commission believes the proposed commitment essential in fiscal-year 1982 if the Summaries program is to be a viable one. Without a significant commitment of resources, the program will not be completed within the 5-year time frame envisioned by the Commission. Summaries will be updated with addendum sheets at no more than a 2-year interval from the time any individual Summary is released, thus negating the need for the same resource commitment in future years once the overall program is completed. The Summaries program calls for total commodity coverage for all items included in the TSUS. Thus trade-sensitive, as well as other industries, will be covered in the program. It should be noted that the current Summaries program has been streamlined so that individual Summaries will cover a greater number of commodity items with a primary focus on those items which are sensitive in international trade.

It should be noted that the Summaries program is a by-product of the expertise which the analysts develop during the course of their ongoing Commission work in investigations and other trade and tariff responsibilities. The Summaries provide basic information on current trade and issues which are important to (1) domestic and import business interests, (2) executive departments, including the U. S. Customs Service which uses the Summaries as an important training vehicle for their 1200 import specialists, (3) the U. S. Court of International Trade which references the Summaries in decisions concerning tariff classification matters, and (4) other private groups interested in trade matters.

If the Summaries program were eliminated, it would not be feasible to reduce the number of employees. The Summaries program is spread throughout approximately 90 commodity-industry analysts and the Summaries work represents only a small percentage of their total work responsibilities through the course of a fiscal year. Any reduction would necessitate an elimination of commodity expertise which is the foundation for most of the Commission's analytical resource base necessary for the successful completion of its responsibilities.

Question 3: Systems Furniture

Your request states the furniture acquisitions and installation will total $292,000. How much did you receive for this last year?

How do you justify such a large increase?

Is the Commission committed to these purchases or will you study the efficiency of systems furniture and determine at a later date whether to make additional purchases?

Answer

We are currently planning to spend $292,000 more in FY 1982 for systems furniture than is budgeted for FY 1981. FY 1981 budgeted furniture costs of $30,000 include only $8,000 for systems furniture items needed to modify past installations.

We are trying with systems furniture to put more people into less space so that we can consolidate as many of our people as possible into our main building. This will help us to hold down on rental charges and improve our efficiency by letting people work together without having to move between buildings.

The Commission does not have any firm commitment for these purchases in 1982. During FY 1980 the Commission acquired systems furniture for two of its major offices. Most of the installation of this equipment has been completed during 1981. FY 1981 plans include only $8,000 for systems furniture purchases to cover items required to adjust or complete this initial installation. During the balance of FY 1981 and in early FY 1982 we will make an evaluation as to whether we are gaining the cost effectiveness and the work productivity improvement that we hope to gain from going to systems furniture. If we find that system is not working as we expect it to we will not complete these planned purchases in FY 1982.

Question 4-Travel

Would you provide for the record a list of travel expenditures by Commissioners and their staffs in the last two fiscal years?

Answer

The requested lists are shown below:

Travel by Commissioners and their staffs - FY 1980

Traveler & Purpose of Trip	Destination	Date of Travel	Amount
Commissioner Alberger and his Staff			
Commissioner Alberger			
Hearing:Leather Wearing Apparel (TA-201-40)	New York, N.Y.	11/6-7/79	$ 209
Hearing:Ground Fish (TA-201-41)	Seattle, Wash.	11/12-16/79	679
Hearing:Iron Metal Castings (India) (731-TA-37) and Speech at Bank of America	San Francisco, CA.	8/26-28/80	676

Travel by Commissioners and their staffs - FY 1980

Traveler & Purpose of Trip	Destination	Date of Travel	Amount
Tour Auto Plants re Automobiles (TA-201-44)	Detroit, MI.	9/20-10/1/80	254
Speech at Int'l Trade Conference & Meetings with various Government officials	London, England, Brussels, and Liege, Belgium, Bonn, Germany & Paris, France	10/15-26/79	1,702
Participate as a member in ABA course of study on international trade and antitrust law	New York, N.Y.	2/28-29/80	185
Speak at 10th Annual Workshop Ind. Zinc Alloyers Association	Ft. Lauderdale, Fla.	4/12-14/80	330
Panelist on Int'l Trade at American Bar Association Meeting	Honolulu, Hawaii	8/3-7/80	1,116
Speech at 1st Regional meeting of Committee for 806.30 & 807 Inc.	El Paso, Texas	9/8-10/80	442
Speech at World Trade Institute	New York, N.Y.	9/22-23/80	245
Mary Drury			
Hearing:Iron Metal Castings (India) (731-TA-37)	San Francisco, CA.	8/26-28/80	484
Robert Bannerman			
Assist Vice Chairman at ABA course presentation	New York, N.Y.	2/28-29/80	172
Assist Vice Chairman at World Trade Institute presentation	New York, N.Y.	9/22-23/80	245
Rufus Yerxa			
Assist Chairman at 806.30 807 meeting	El Paso, Texas	9/8-10/80	442
Commissioner Bedell and her staff			
Commissioner Bedell			
Hearing:Leather Wearing Apparel (TA-201-40)	New York, N.Y.	11/5-8/79	204
Hearing:Ground Fish (TA-201-41), Tour of Silicon Valley, Panelist at San Francisco Trade Meeting on the role of the USITC	Seattle, Wash.	11/12-16/79	631
Hearing:Iron Metal Castings (India) (731-TA-37) and Speech at Bank of America	San Francisco, CA.	8/24-29/80	622
International Trade Meetings and White House Conference on Families (delegate) and tour Toyota Plant	Los Angeles, and San Francisco, CA.	8/24-29/80 6/26-7/15/80	972
Ann Wrigley			
Hearing:Iron Metal Castings (India) (731-TA-37)	San Francisco, CA.	8/24-29/80	562

Travel by Commissioners and their staffs - FY 1980

Traveler & Purpose of Trip	Destination	Date of Travel	Amount
Paul Newhouse			
Tour Auto Plants re Automobiles (TA-201-44)	Detroit, MI.	9/30-10/1/80	243
Robert Fluss			
To visit New York Office	New York, N.Y.	4/17/80	139
Commissioner Calhoun and his staff			
Commissioner Calhoun			
Hearing:Iron Metal Castings (India) (731-TA-37)	San Francisco, CA.	8/26-30/80	725
Tour Auto Plants re Automobiles (TA-201-44)	Detroit, MI.	9/30-10/1/80	272
Participate World Trade Institute, Tour of New York Office of I.T.C.	New York, N.Y.	3/26-28/80	252
Panelist U. S. -China Trade Law Conference	San Francisco,	5/14-17/80	679
Panelist policy issues semi-conductor industry conference	Monterey, CA.	6/18-20/80	459
Marsha Echols			
Tour Auto Plants re Automibiles (TA-201-44)	Detroit, MI.	9/30-10/1/80	257
Tour European Automobile Plants and Steel Facilities	Brussels, Paris London, Wales & Marseilles	8/14-27/80	1,563
Sheila Hopkins			
Hearing:Iron Metal Castings (India) (731-TA-37)	San Francisco, CA.	8/26-30/80	622
Commissioner Moore and his staff			
Commissioner Moore			
Hearing:Iron Metal Castings (India) (731-TA-37)	San Francisco, CA.	8/25-29/80	1,195
Deliver Speech at Practicing Law Institute	New York, N.Y.	6/11-13/80	230
Irving Raines			
Hearing:Leather Wearing Apparel (TA-201-40)	New York, N.Y.	11/5-7/80	200
Commissioner Parker and his staff			
Commissioner Parker			
Hearing:Leather Wearing Apparel (TA-201-40)	New York, N.Y.	11/5-7/80	266

Travel by Commissioners and their staffs - FY 1980

Traveler & Purpose of Trip	Destination	Date of Travel	Amount
Attend 66th National Foreign Trade Convention	New York, N.Y.	10/21-23/79	247
Claud Gingrich			
Hearing:Leather Wearing Apparel (TA-201-40)	New York N. Y.	11/6-8/79	225
Robert Fluss			
Hearing:Ground Fish (TA-201-41)	Seattle, Wash.	11/12-16/79	648
Robert Pancakes			
Hearing:Ground Fish (TA-201-41)	Seattle, Wash.	11/12-16/79	645
Commissioner Stern and her staff			
Commissioner Stern			
Hearing:Ground Fish (TA-201-41)	Seattle, Wash.	11/10-18/79	756
Hearing:Leather Wearing Apparel (TA-201-40)	New York, N.Y.	11/5-7/79	215
Hearing:Iron Metal Castings (India) (731-TA-37)	San Francisco, CA.	8/26-29/80	818
First of Series of Meetings at Council on Foreign Relations (CFR) -- Participant in Discussion Group on The Role of U.S. Labor in the Int'l Economy	New York, N.Y.	10/17/79	126
Attend 66th National Foreign Trade Council Convention	New York, N.Y.	10/22-23/79	175
Second of Series of Meetings at CFR -- Discussion Group participant	New York, N.Y.	12/5/79	138
Allied Social Science Annual Meeting -- Panelist for Session on "The U.S. Government's Role in the Promotion, Development, and Stimulation of Int'l Trade	Atlanta, GA.	12/28/79	247
Third in Series of Meetings at CFR --Discussion Group Participant; ALSO: Substitute for Vice Chairman -- deliver speech on New Role for the U. S. International Trade Commission (commenting on impact of the Trade Agreements Act of 1979 on the operations of the ITC) To the British-American Chamber Conference on Int'l Trade	New York, N.Y.	1/28-29/80	202

Travel by Commissioners and their staffs - FY 1980

Traveler & Purpose of Trip	Destination	Date of Travel	Amount
Commissioner Stern-continued			
Member of U.S. Delegation participating in Organization for Economic Cooperation and Development (OECD) Symposium on "The Steel Industry in the 1980's" -- Meetings with officials of the Italian and French Governments and U.S. officials stationed in those countries prior to and during the symposium	Rome, Italy & Paris, France	2/20-29/80	1,682
Participant in Interface Two Conference co-sponsored by the Faculty of Law and Administration, Adam Mickiewicz University, Poznan, Poland, and the Int'l Law Institute, Georgetown University -- discussions of countertrade, Section 406, policy after the Tokyo Round, trade with non-market economy countries, etc,; Meetings with officials of the Polish Government and U. S. officials stationed in Poland prior to and during the conference	London/Warsaw/ Poznon, Poland	6/3-14/80	1,802
Andrew Wechsler			
Hearing:Ground Fish (TA-201-41)	Seattle, Wash.	11/12-16/79	768
Hearing:Iron Metal Castings (India) (731-TA-37)	San Francisco, CA.	8/26-29/80	793
Charles Hunnicutt			
Course on International Trade	New York, N.Y.	2/28/80	138
Conference on Commercial Arbitration	New York, N.Y.	9/30-10/3/80	318
Commissioner Alberger			
Tour Non-Rubber Footwear (TA-203-7)	Boston, MA.	1/11-12/81	296
Attend and speak at special session U.S. Court of Int'l Trade	New York, N.Y.	12/19/80	191
Speeches at World Affairs Council and U.S. National Bank	Portland, OR.	10/26-29/80	437
Commissioner Bedell			
Lecturer in residence - Chatham College	Pittsburgh, PA.	10/26-29/80	116
Speak at Seattle World Trade Club & Washington Council on International Trade; meet with representatives of Yakima farm groups; attend trade meetings in San Francisco	Seattle, Yakima, Washington, Oakland & San Francisco, CA.	2/10-24/80	1,046

Travel by Commissioners and their staffs - FY 1981 (thru 2-28-81)

Traveler & Purpose of Trip	Destination	Date of Travel	Amount
Commissioner Calhoun and his staff			
Commissioner Calhoun			
Speech on International Trade	New York, N.Y.	11/21/80	180
Speech at U. S. Court of International Trade	New York, N.Y.	1/29/81	170
Speak on International Trade at Harvard University	Boston, MA.	2/26-27/81	320
Marsha Echols			
Attend seminar on Barter Principles	New York, N.Y.	12/3-5/80	345
Commissioner Stern and her staff			
Commissioner Stern			
Tour Auto Plants re Automobiles (TA-201-44)	Detroit, MI.	10/2/80	262
Tour Non-Rubber Footwear (TA-203-7)	Boston, MA.	1/11-12/80	349
Delivered speech on Market Disruption and Trade with non-market economies to University of Pennsylvania Law School Seminar on U. S. Trade Policy	Philadelphia, PA.	12/4/80	120
Andrew Wechsler			
Tour Auto Plants re Automobiles (TA-201-44)	Detroit, MI.	10/2/80	262
Ruth Kurtz			
Tour Non-Rubber Footwear (TA-203-7)	Boston, MA.	1/11-12/80	349
Charles Hunnicutt			
Attend National Foreign Trade Council Convention	New York, N.Y.	10/19-22/80	418

Question 5:Automobile Imports Investigations

A. Investigations: Last June, the UAW and Ford Motor Company petitioned the Commission to determine the extent of damage under Section 201 of the Trade Act that Japanese and other auto importers have caused the domestic industry. Briefly, what were the results of your findings?

Answer

Please see Chairman Alberger's response to this question during the hearing.

B. Comments on Recent Legislative Proposals: Auto Imports Restraints

Now that the loss figures are in for 1980, the big four manufactures lost a total of $4.2 billion for the year.

Ford	$1,543,300,000
Gen. Motors	762,500,000
Chrysler	1,710,000,000
Amer. Motors	197,500,000
TOTAL	$4,213,300,000

Recent legislative proposals recommend two possible courses of action:

1. An Orderly Marketing Agreement where the President can directly negotiate restraints.

2. Outright quotas on imports from Japan.

What relief, if any, would you expect such actions would bring to the domestic auto industry?

Answer

Since the Commission did not find increased imports to be a "substantial cause" of injury, the statute precluded it from recommending any form of relief to the President. Thus, the question of how effective import relief of any kind would be is a policy question the Commissioners have not addressed. I might add that there are significant disagreements among industry and government experts on this issue--and we heard some of these disagreements during the course of our hearings. While there seemed to be consensus that import restraints would stimulate small cars sales to some extent, there was no clear consensus on whether overall production, profitability, and employment would improve substantially. One of the major factors affecting employment, for example, is automation.

I want to emphasize, though, that the Commission never passed judgement on this question.

C. Trade Restraint alone will not make U. S. Auto producers more competitive

Whatever the approach, do you believe that a trade restraint should be coupled with sacrifices within our domestic industry -- sacrifices like binding wage freezes and increased capital investment, all meant to insure our companies will become more competitive?

Answer

This is a question relating to overall economic policy that I believe is outside the confines of the statutory scheme governing escape clause cases before the Commission. Obviously, any limitations on costs or improvements in products brought about by capital expenditures will probably result in a more competitive domestic industry. However, the need to mandate such action within the auto industry is a matter for Congress and the President to determine.

Question 6: Budget Cuts

We anticipate that OMB will recommend a 5-10% across the board cut for all independent agencies other than those targeted for greater cuts. Knowing that you are exempt from the budget and accounting act under Section 175 of the Trade Act of 1974, how would such a decrease effect your operation capabilities?

Would you supply for the record a list of those programs which would be eliminated should your budget be cut by 10%?

Answer

If the cutback is too large we fear that we might have to have less staff participation in investigations or in other mandated work. We fear that this would cut back the overall quality of our work product. In addition, significant cuts could make it necessary for

fewer individual Commodity-Industry Analysts to cover a broader spread of individual commodities and industries. This widening area of responsibility would again tend to reduce the depth and quality of the Commission's expertise.

Since the Commission is requested to respond to external requests properly filed in accordance with applicable statutes, the Commission cannot directly control the scale of many of its programs. The Commission, therefore, would not at this time plan to eliminate specific programs in response to a specific level of budget cut.

Question 7: Trade Monitoring: Duplication

The FY 1982 budget requested $1.18 million for trade monitoring. Is this activity duplicative of that carried out by the Secretaries of Commerce and Labor under section 282 of the Trade Act of 1974? Do you coordinate your trade monitoring program with these agencies?

How does The Trade Monitoring data base fit with the proposed Harmonized Commodity Code?

Answer

The trade monitoring program consists of three major segments -- (1) the East West Report, which contains quarterly data on U. S. exports to, and imports from, nonmarket economy countries; (2) the OTAP report, an annual report on the operation of the trade agreements program; and (3) the new Trade Monitoring Information Support System (TMISS). The first two reports are mandated by the Trade Act of 1974, while the TMISS was devised with existing resources to allow better monitoring of shifts in U. S. trade. It is an integral part of our data compilation process which facilitates our investigative work and also allows us to pinpoint problem areas for further study.

The Commission's monitoring under the TMISS does not duplicate the work carried out by the Secretaries of Commerce and Labor under Section 282 of the Trade Act of 1974. The TMISS, which tracks data for over 2,500 commodity groupings on a monthly basis, tests shifts in export and/or import trade by quantity, value, unit value, country of destination, and source, against predetermined criteria. By comparison, the programs undertaken under Section 282 monitor principally imports on a quarterly basis at a broader industry level. Unlike the Section 282 monitoring programs, the TMISS was developed to quickly pinpoint significant shifts in the trade of goods into or out of the United States. By integrating the system with our existing commodity expertise we hope to be able to analyze quickly the effects of such shifts on production, employment, wages, prices, inventories, and other business indicators.

The Commission is anxious to provide the data and analysis resulting from the TMISS in a format useful to policymakers throughout the government. The vehicle we have chosen is a new publication series containing quarterly and annaul reports on the most significant trade shifts. The concept and format have been discussed in a series of meetings with members of the Trade Policy Staff Committee and in informal discussions with the USTR and, our Oversight Committees in Congress. There is general agreement that our reports will be both useful and unique. We will continue to cooperate with USTR and the TPSC in order to assure that our monitoring system is not duplicative and is of maximum utility to the entire government.

The Trade Monitoring data base follows the TSUS format. When and if the United States converts to the proposed Harmonized Commodity Code, the data base will need to be revised to follow the new format. This should not be a major problem.

Question 8: Self-Initiated Studies

Regarding section 332 self-initiated studies, who are the Congressional staff contacted to determine interest and feasibility?

A. How are such studies coordinated with other executive branch entities, such as Commerce or USTR?

Answer

In order to ensure that any self-initiated study obtains the widest acceptance possible, the Commission staff meets with representatives of our Congressional Oversight Committees and appropriate Executive Departments. For example, in planning the 332 studies currently underway or proposed for FY 1981, the Commission staff met with staff members of the Senate Finance Committee and discussed objectives and study approaches. In addition, the Commission met with staff at the Office of the USTR to isolate possible study areas in the early planning stage, and discussed specifics of the current and proposed studies as they evolved prior to implementation by the Commission.

Question 8-B

What studies are underway or planned?

Answer

The following studies are underway or planned:

RECENTLY COMPLETED

Title	Purpose
Study of the Multifiber Arrangement (This study has actually been completed and publication is scheduled for March 11, 1981).	To gather and present information on trade in textile products covered under the Arrangement Regarding International Trade in Textiles known as the Multifiber Arrangement.

IN PROGRESS

Study of Production Techniques and Production Specification within U. S. Industries	To examine a relationship between high levels of import penetration and high levels of exports in the same industry. Important factors include the availability and use of skilled labor, economies of scale, new technology and production techniques.
Study of the Effectiveness of Escape Clause Relief in Promoting Adjustment to Import Competition	To assess the effectiveness of "escape clause" import relief in encouraging and facilitating the adjustment of industries that the Commission has found to be injured by import competition.
Study of the Effect of the Enlargement of the European Community on U. S. Trade	To analyze the probable effects on U. S. trade of the enlargement of the European community to include Greece, Portugal, and Spain.
Study of the U. S. Dye Industry Competitiveness in the World Market	To assess the competitiveness of the U. S. Dye Industry vis-a-vis foreign competitors by analyzing various items of competitiveness such as research expenditures and productivity.
Study of the Relationship between Exchange Rate Changes and Trade	This study is designed to analyze a crucially important factor in U. S. price competitiveness. Whereas any factor that affects prices of imports or exports by 5% over the course of a year is normally considered major, the value of the dollar can change by as much as twice that percentage in a matter of weeks and thereby greatly affect the competitiveness of all tradable-goods industries.

PLANNED

Title	Purpose
Study of Emerging Textile Exporting Countries	To provide Government officials with projections concerning new suppliers of textile products as well as possible new export markets for U. S. apparel and production equipment. This study should be of particular value to trade policy makers as they participate in negotiations, which began in October 1980, aimed at renewal of the Multifiber Arrangement.
Study of the Implications of Recent Technological Changes on Watch Production	To assess the implications of recent technological changes in the production of watches with emphasis on the effect on the conventional watch assembly industry, which has been established in U. S. Insular Possessions in order to take advantage of the provisions of Headnote 3(a) in the TSUS. This Headnote provides for duty-free entry of articles in the Insular Possessions provided that foreign materials do not comprise more than 70% of their total value (in the case of watches).
Analysis of Recent Trends in U. S. Barter and Countertrade	To analyze the impact of barter/countertrade on international trade in general and its effect on the U. S. economy. The growth and varieties of barter/countertrade are unchartered. The study is timely because of anticipated growth in such trade and its possible impact on specific sectors of U. S. trade.
Study of Special Summary Steel Invoice (SSSI) Data	To provide the Executive Branch with specific knowledge of the flow of imported steel into the U. S., shifts in distribution patterns resulting from the Trigger Price Mechanism (TPM), and market characteristics necessary to assess the steel industry's international competitive position. The primary resource for this study will be SSSI data which foreign steel producers/importers are required by the TPM to submit with each import entry. This information contains much detail by product category, price points, marketing costs, end-use, and geographic distribution information which has not been analyzed anywhere in Government or the private sector.

Question 9 : Congressional Reports

There are two reports, mandated by Congress, of the ITC and other executive branch agencies--the operation of the trade agreements program and East-West trade. (NOTE: The trade agreements reports from ITC and the President are called for in Section 402 of the Trade Expansion Act of 1962. The East-West trade reports from ITC and USTR are called for in Section 410 and 411 of the Trade Act of 1974. It is to be noted that the Section 411 report by USTR is not being prepared.)

A. Is there a need for two reports?

B. How are they different?

C. Do they call for different evaluations?

Answer

The decision to have two reports, one from the ITC and one from the President, was made by Congress and the distinctions between the President's reports and the reports of the USITC have evolved from the special interests and expertise of the agencies preparing the reports. Only the Congressional users of these reports can determine whether there is a need for two reports.

The President's report on the operation of the trade agreements program is used to present the Executive Branch's view of the results of its trade policy. The ITC report has been involved with greater technical detail in reporting on the operation of the trade agreements program and provides an independent data-oriented factual review.

The East-West trade report produced each quarter by the ITC is a factual, and primarily statistical,report. Since 1977, the USTR report has not been prepared, but it is our understanding that the USTR is considering reinstituting a quarterly letter to Congress in which they would report on current policy issues that are not covered in the ITC report.

Question 10: Administrative Costs

Why have the costs of "administration" at the Commission increased by 35% from FY 1980 to the level requested in FY 1982?

Answer

The Commission's budget request for 1982 includes an amount for Activity 5, Administration, which is $456,000 or 35.2% above the actual cost for 1980. Of this amount, $292,000 or 22.6% is caused solely by the fact that the full amount of the 1982 program increase for systems furniture was charged to Administration rather than being allocated to all activities as an overhead expense. Thus, usual administrative costs will increase by only $164,000 or 12.6% in 1982 from the FY 1980 amount. Of this increase, the pay raise effective in October 1980 raised costs by about $85,000. Other automatic and inflationary cost increases accounted for most of the balance. The Commission has made few changes in its operating plans for administration.

Administration

		Amount	% of 1980
Total increase from 1980		$456,000	35.2%
Systems furniture increase in 1982, all allocated to Administration. (In FY 1980, equipment acquisitions were allocated to all activities rather than only to administration.)		-292,000	22.6%
		$164,000	12.6%
Effect of 1980 pay increases	$85,000		
Miscellaneous built-in and inflation cost increases	60,000	145,000	11.2%
Balance		$ 19,000	1.4%
(Cost of new employee less change in planned vacancy)			

Question 11: Harmonized Commodity Code

What additional requirements of the Harmonized Commodity Code activities justify the $187,000 increase requested?

Answer

As work on the Harmonized System is being completed in Brussels, domestic activities with respect to the System are accelerating. The Commission is currently preparing for two final review sessions of the Harmonized System Committee in Brussels which will take place in May and October of this year and which are intended to finalize the Harmonized System nomenclature. During FY 1982 the Harmonized System Committee will turn its attention to the Explanatory Notes to the System. The Commission will, of course, also participate in those Committee sessions.

The major basis for the requested budget increase for Harmonized System activities for FY 1982 is a Presidential request which we expect to receive in June of this year for a conversion of the Tariff Schedules of the United States into the format of the Harmonized System. This conversion is expected to take 2 years to complete. This TSUS-Harmonized System conversion, which will become a vehicle for determining whether the United States should adopt the Harmonized System, will draw upon the commodity expertise of all of the commodity analysts in the Commission. In addition, the preparation and publication of the converted draft chapters for hearing and public comment will require a substantial increase in clerical support, either in terms of overtime or outside typing services.

Question 12

Did the Commission conduct any cost effectiveness study before subscribing to Westlaw Legal Information System? Would you please describe its study and its conclusion.

Answer

The Commission examined a number of legal research systems before subscribing to the Westlaw System. Because of the qualitative nature of many of the operating improvements derived from such systems, a specific cost effectiveness measurement is not practicable. The primary purpose of subscribing to such a system is to increase both the speed and scope of the Commission's research. Computerized systems have the particular advantage of allowing us to search for data on the basis of key terms and phrases which may not be picked up by traditional indexes.

The Commission hopes to develop a private data base library using the Westlaw Legal Information System facilities. This file would be available to Commission personnel and would include General Counsel memoranda, Commissioners' opinions, and litigation documents. The access to this computerized file will facilitate formulation of reports and preparation of Commissioners' opinions, and will support the Commission's activities related to its vastly increased litigation workload. We selected the Westlaw service rather than competitive services because it alone offered both a Customs data base and private library facilities.

Question 13

Would you describe the need for an increase in the professional assembly and analysis of information function. Does this function overlap the trade monitoring or summaries program function?

Answer

The Commission is asking for a modest increase for professional assembly and analysis of information. This function includes fieldwork, miscellaneous research, review of trade literature, and the development of current technical information for Commission activities such as

antidumping and countervailing duties investigations, which were broadened under the Trade Agreements Act of 1979. For example, this program includes a requirement that each Commodity-Industry Analyst meet regularly with association and business representatives to remain current with important trade and tariff issues affecting individual industries.

The increase provides for the staff development to assure the availability of adequate technical data and professional knowledge to carry out the varied Commission activities required by statute and/or requested by trade policymakers. The work performed in this professional development category is distinct from the specialized analysis involved in the trade monitoring function and from the publication of summaries.

Question 14

The Commission has instituted a flexitime program. Has any review been conducted as to the effectiveness of the program? What steps have been taken to ensure supervision of employees during the expanded workday?

Answer

The Commission does not have a full "flexitime" program. The Commission's agreement with it's Union does provide for scheduling of individual work hours in advance on a flexible basis. For example, a employee, with the supervisor's approval, may begin and end work each day a consistent period before or after the official agency hours of 8:45 to 5:15, but must work 8 hours each day.

The Commission has conducted a number of periodic reviews with reports from each of its offices dealing with both benefits and problems of the program. Operating problems have been found to be minor and the consensus of reports found that efficiency has been maintained or increased.

Employee supervision is accomplished primarily by evaluation of the employee's product during unsupervised hours. It is obviously not practicable to carry out direct visual supervision during these periods.

Question 15

The Commission shifts resources among individual activities in response to changing demands for its services. How does this affect the training and development of staff? More importantly, are investigations harmed by shifting resources from other areas? Are the skills required for effective performance of different activities different? If so, what impact does this shifting have on the delivery of services?

Answer

As I have pointed out in my statement, the Commission's output has expanded rapidly in recent years, while its budget growth has been below the overall Government average. This has been made possible by the Commission's practice of shifting resources, particularly staff, among individual activities in response to changing demands.

This shifting does not represent the movement of individual employees between offices. Rather it is the use of employees with specific skills to work on a variety of different programs, often as part of a project team. For example, the Commission recently completed a Summary dealing with Tires and Tubes. We have just initiated an investigation dealing with alleged dumping of Tire Valves. We will need to analyze the proposed segment of the Harmonized Code structure which deals with Tires. The same professional commodity specialist has been, and will be, involved with all of these activities.

This shifting between activities improves the development of staff and, although not done primarily for training purposes, is in fact a form of

training. Skills for the different activities related to the single product or the same professional field (e.g. law) are very closely related. The Commission believes that, by bringing the different professional disciplines together on specific activities, this shifting of resources improves both the quality and timeliness of the delivery of its services.

Question 16

What is the Commission data base? What is involved with its maintenance? Are there possibilities for updating by use of other agency source data?

Answer

The Commission's data base is actually a collection of services and activities which support the data and information needs of the Commission. It includes library elements, micrographic materials, computerized records, and the basic data system which includes data such as U. S. production, imports, exports, and prices. Since the Commission is not a primary data collector, it regularly depends upon other Government agencies for updating its basic data files such as production, imports, and exports. During formal investigations, the Commission frequently asks private sources for data and information which is also incorporated in the data base in an aggregated form.

Question 17 A

What is the basis for the Commission's expectation that there will be an increase in requests for 201 cases?

Answer

In FY 1980 the Commission completed 8 import injury investigations, including 5 under section 201, 2 under section 406, and 1 under section 203. We expect this total to increase slightly to 9 in FY 1981 and 10 in FY 1982 because of growing economic problems in individual industries and growing trade with nonmarket economy countries (particularly China). While our expectations with respect to the filing of new 201 and 406 investigations represent only our best estimates, we are much more certain of the number of section 203 "review" investigations that will be filed. One such investigation is currently underway (footwear) and requests are anticipated in the next several months for investigations on mushrooms and porcelain-on-steel cookware (Presidential proclamations direct the USTR to request these investigations), and on ferrochromium, metal fasteners, and clothespins. With respect to possible 201 investigations, the Commission staff has met with 6 prospective petitioners in recent months and another meeting is scheduled later this week. Draft petitions prepared by industry representatives for review by the Commission during these meetings are in varying stages of development but several are believed to be in near-final form.

Question 17 B

What is the procedure for conducting a 201 investigation?

Answer

Briefly, a 201 investigation generally starts with the receipt of a petition by the Commission. If the petition is found to be legally sufficient the Commission institutes an investigation and gives appropriate notice. A work schedule is prepared by the staff for Commission approval. It sets forth dates for the drafting, mailing and return of questionnaires, prehearing report to the Commission, prehearing conference, prehearing briefs, public hearing, post hearing submission, final report to the Commission, briefing and vote, and final report to the President. Staff assignments are made to the investigating team which at a minimum includes a member from each of the following offices -- Investigations, Industries, Economics, and General Counsel.

We then enter the data gathering and analysis period which involves the collection of data from public sources and from questionnaires to domestic producers, importers, and purchasers of the articles in question. The public hearing is an important part of this data gathering process.

The next phase of the investigation is the preparation of the final staff report. This report is drafted by the team assigned to the investigation under the supervision of a supervisory investigator. It is then reviewed in depth by the Commission's senior staff before it is distributed to the Commissioners. If there has been a disagreement among the reviewers or the staff members assigned to the investigation with respect to some substantive issue which the staff was unable to resolve, a memorandum presenting the dissenting point of view may be submitted at the same time as the staff report.

Additional documents are also prepared for the Commission within a few days of the submission of the final report. These include suggested vote language--both affirmative and negative, pros and cons statement for each of the statutory economic criteria and an analysis of the nine section 202(c) considerations which include an analysis of the efforts being made by the industry to adjust to import competition and the effect of import relief on consumers and the international economic interests of the United States. The supporting documents also include a discussion of remedy alternatives--imposition of an increased tariff, a tariff-rate quota, quantitative restrictions on imports, or a combination of these, as well as the provision of trade adjustment assistance to workers and firms.

Question 17 C-1

What is the Commission doing to:

Ensure full participation by all offices in a 201 investigation?

Answer

At least one and often more than one representative from the Offices of Investigations, Industries, Economics, and the General Counsel are assigned to each 201 investigation. The Commission approves these staff assignments. In addition, a nomenclature analyst from the Office of Tariff Affairs must approve all notices and reports issued in connection with these investigations. The Office of Data Systems reviews and approves all reports for the accuracy of the statistical data contained therein and all final reports are reviewed by our Editorial Section before they are released for publication. Thus, the investigative process at the Commission is a total team effort.

Question 17 C-2

What is the Commission doing to:

Improve financial analysis and technological expertise?

Answer

The Commission's Office of Investigations has two experienced accountants that assist each 201 investigating team with respect to financial analysis. In addition, all members of the investigative staff have taken or are scheduled to complete within the next two months an in-house training course that is provided by the Wharton School on financial analysis for non-financial executives. Several members of the investigative staff have taken or are currently taking accounting courses from local universities. In the area of technological expertise we rely heavily on the expertise of the commodity-industry analysts, economists, tariff and nomenclature specialists as well as employing the skills of our data processing specialists.

Question 17 C-3

What is the Commission doing to:

Ensure data verification of questionnaire responses?

Answer

The Commission's staff--an investigator and a statistical assistant--both review questionnaire responses to determine whether there are any

apparent errors in the document prior to the data being tabulated. Obvious errors are immediately checked out with the respondents. Financial data from the questionnaires are reviewed by an accountant. The accountant checks any questions he might have concerning allocation of costs and questionable accounting practices with the respondent. If necessary, the accountant will visit a producer and verify what he believes to be questionable financial data. The economist assigned to the case reviews pricing data and data on lost sales. Such data is frequently verified by the submission of invoices and salesmen's report. The accuracy of the statistical tables presented in the Commission reports are checked by a statistician in the Office of Data Systems.

Question 17 C-4

Regarding section 201 and section 203 import injury investigations, what is the Commission doing to expand the required price analysis?

Answer

The principal approach to expanding price analysis has been to reorganize and strengthen the Office of Economics, whose economists are responsible for obtaining and analyzing prices.

The office reorganization included the creation of the Investigation Support Division, whose economists are assigned to investigative work on a full-time basis. The resulting work environment provides valuable on-the-job experience for junior economists and thorough direction and review by senior economists, to insure complete and accurate analysis.

To strengthen its participation in all investigations, the Office of Economics has also recruited several new economists, including an experienced transportation economist to provide analysis of regionality issues that may arise in countervailing duty and antidumping investigations.

The current system provides for more extensive participation by economists in the analysis of prices for import-injury determinations. Also, if the Commission is to recommend import relief to the President, the Office of Economics prepares an extensive analysis of prices for the Commission's consideration. This analysis includes estimating the effects on prices of alternative remedy proposals, such as tariffs, quotas, or tariff-rate quotas.

Question 17 C-5

What is the Commission doing to:

Establish a formal draft review process involving all offices, and to make the dissent memo procedure an effective method for obtaining dissenting views:

Answer

The Commission's senior staff has been advised by memorandum of a procedure, developed by the Director of Operations, to allow for the expression of dissenting views on substantive issues in Commission investigations directly to the Commissioners. In addition, individual Commissioners meet with investigative teams prior to voting on cases. At this time they solicit the views of all staff members assigned to the case and encourage these staff members to present their personal point of view. When divergent views exist, we usually find out and make our own evaluation of the differing opinions.

Questions Submitted by Senator Hollings

Question 1

Do you have a listing of the program reductions or eliminations that the Commission approved in 1981?

Answer

The Commission approved elimination of the processing of a 1% sample of Customs documents to obtain detailed data concerning individual import transactions. The Commission also approved the closing of the New York Office, the transfer of some of its employees to the Washington Office, and the continuation of two employees in New York to obtain from Customs files data needed for preparation of the Synthetic Organic Chemicals Reports. These approvals were made late in FY 1980 and became effective in FY 1981.

Question 2

How much did these reductions and eliminations amount to?

Answer

For FY 1981 the elimination of the 1% Sample is expected to save about 1 1/2 work years and $36,000. The elimination of the New York Office is expected to save about 2 1/2 work years and $89,000 in FY 1981.

Question 3

Where have these savings been reprogrammed to? For instance, wasn't the Executive Direction activity increased?

Answer

The Commission approved plans for these savings as a part of a comprehensive review of its 1981 operating plan, carried out as a part of the development of the 1982 budget request. The individual savings resulting from these two program changes were not directly transferred and reprogrammed to another activity. During the reexamination of 1981 resource requirements by activity, carried out as part of our development of the 1982 budget request, the Commission did add one work year to the Executive Direction activity but with the two current vacancies on the Commission, we are significantly under budget targets in this activity. It also revised upward allocations to other specific activities such as Trade Monitoring and Investigations of Probable Economic Effects of Concessions or Preferential Duty-Free Treatment and reduced allocations to other activities such as Section 332 Investigations and Studies.

Question 4

How much has been spent on the Commission's new Trade Monitoring Information Support System?

Answer:

The Trade Monitoring Information Support System represents a determined effort on the part of the Commission to formalize a commodity trade information system and establish a greater degree of data comparability throughout the Commission. In the past, the commodity data varied from analyst to analyst and division to division, and the Commission did not have a regularized and systematic commodity base. When the Commission began development of the Trade Monitoring Information Support System in earnest, it established a separate budget category, within its overall data development budget, in order to accurately monitor the cost of the new system. The separate category was established in March 1980, and for the remainder of that fiscal year (7 months), the Trade Monitoring Information Support System represented a total cost of approximately $240,000. In reviewing this figure, it should be remembered that there was a

significant start-up cost involved with the initial development of the system. Thus far in fiscal-year 1981, the total charges as of January 24, 1981, are $82,000, a figure which reflects continuing developmental costs, as well as, a pilot effort at producing a publication which would report the significant trade developments identified by the system.

Question 5

Does the Commission's system cover textile imports, and if so, how does it tie into the textile import monitoring system (TIMS) of the Department of Commerce:

Answer:

The Commission's Trade Monitoring Information Support System does cover textile imports at a product level which closely matches recognized industry categories of textiles production. It should be noted that the system also incorporates the data for the equivalent product categories of textile exports, an issue of concern in evaluating the competitive posture of the textile industry of the United States. The Commerce Department's textile monitoring system is largely designed to provide import data grouped according to the MFA categories which are administered by the Commerce Department. The data groupings of each system are designed to satisfy the particular needs of the respective agency. The Commission's Trade Monitoring Information Support System is at a more finite product level. The two systems are non-duplicative, and indeed, they complement each other.

Question 6

What do you mean by the statement "that other agencies have received funding targetted for development of a trade monitoring system, and have met with little, if any success"? For instance, this Subcommittee appropriated $2,500,000 for the TIMS system and every indication is that it is a success.

Answer:

I meant to convey the following thought: Under the Trade Act of 1974, specifically in section 282, the Departments of Labor and Commerce were directed to establish a program to monitor imports of articles into the United States to reflect changes in the volume of those imports. The Labor Department does compile quarterly import and employment data on a 4-digit SIC basis. This information is limited to the 4-digit SIC level and has limited distribution in the Government.

The Commission has in place a monitoring system for its commodity-industry analysts which on a monthly basis compiles import and comparable export data for 2500 commodity groupings at a product level rather than a 4-digit industry level. Moreover, to our knowledge, it is the only system which systematically tests comparable export and import trade data against criteria to measure significant shifts in quantity, value, unit value, and major shifts in export market or import source. The system, which is operational, currently provides a basis for pinpointing significant trade shifts in the totality of goods traded into or out of the United States to world markets. My statement did not mean to imply that the efforts such as TIMS were not successful but rather that no other system was as comprehensive nor designed to measure equivalent import and export categories for all commodities against predetermined trade-shift criteria.

Question 7

How much less do you expect to spend on countervailing duty cases in 1981? Why can't those savings be applied to your supplemental for increased pay costs instead of being burned up in additional 332 studies?

Answer

The Commission has projected an FY 1981 reduction in the number of countervailing duty investigations initiated, but not in the total time to be spent on the investigations. More time per investigation is expected to be necessary partly because we expect fewer multiple investigations dealing with identical products from a number of different countries. In the past several weeks, a number of factors have emerged which collectively suggest that the estimate that there would be a decline in the new case petitions in 1981 may be incorrect. These include a continuation of tight money policy with coincidental possibilities of a renewed recession, the growing political and economical pressures favoring import controls of the automobile and automobile parts industries, the recession in Europe which has to a degree encouraged governmental interference in foreign market mechanisms, and the continuing economic distress of large sectors of American industry. All of these suggest the prospect of increasing filings under our antidumping and countervailing duty laws.

The question implies that the Commission's 332 studies are initiated largely under the Commission's own motion. This in fact is not the case. Traditionally, almost 85 percent of all 332 investigations instituted by the Commission result from specific requests either from the President or the Congress.

In FY 1980, the Commission instituted seven 332 investigations, of which six were at the request of the President or the Congress. Some of the more important of these include:

-- two investigations related to the probable effects on U. S. industry of further tariff reduction under the U. S. Generalized System of Preferences and/or section 124 of the Trade Act of 1974;
-- a study of the petrochemical industries in the northern portion of the Western Hemisphere; and
-- a study of the Multifiber Arrangement

In instances where the Commission institutes investigations on its own motion, such as the just concluded Multifiber Arrangement (MFA) study, the Commission discusses the need for and the approach to the study with executive and congressional committees. Clearly, as an example, the MFA is a most topical and critical one in this year when the MFA expires on December 31, 1981, and the negotiations for renewal are currently underway.

Further, it would be impossible for the Commission to anticipate that either the President or the Congress would not request additional 332 studies of the Commission in 1982. Therefore, any attempt to absorb the total increased pay cost through 332's would not be feasible.

JAPAN-UNITED STATES FRIENDSHIP COMMISSION

STATEMENT OF ROBERT E. WARD, CHAIRMAN, JAPAN-UNITED STATES FRIENDSHIP COMMISSION

ACCOMPANIED BY FRANCIS B. TENNY, EXECUTIVE DIRECTOR

BUDGET REQUEST

Senator WEICKER. We now have before us Mr. Robert E. Ward, Chairman of the Japan-United States Friendship Commission, who is accompanied by Mr. Francis B. Tenny, the Executive Director.

Mr. Ward, we have a statement which you are privileged to read or we can have it submitted for the record in its entirety at this point and summarized, whatever is your pleasure.

Mr. WARD. I have a statement, Mr. Chairman, which I would like to submit for the record. I would like to speak rather than read it.

[The statement follows:]

STATEMENT OF ROBERT E. WARD

Mr. Chairman and distinguished Members of this Subcommittee, it is an honor for me to appear before you on behalf of the Japan-United States Friendship Commission. I have here with me Mr. Francis Tenny, the Commission's Executive Director, who has done the detailed work of preparation of this budget.

The Commission has completed four full years of operation since it was first established by the Congress and provided with a Trust Fund, taken from Japanese repayments to the United States, for the purpose of strengthening the American partnership with Japan. The continuing growth of the Japanese economy and the impact of that economy throughout the world and on the United States have increased the importance of programs that will provide a stable foundation of human understanding between Japanese and Americans. Though we seek the same kind of world in which to pursue a free and productive life, the cultural differences between Japanese and Americans tend to obscure the perceptions of common interests by the American and Japanese peoples. The competitive nature of our two economies brings to public attention the problems more than the advantages in the mutual relationship.

Through 1980 the Commission has been spending an amount roughly equal to the annual income of the Commission on support for programs that will strengthen American knowledge of Japan, Japanese knowledge of the United States, and mutual appreciation of the arts and culture of each other's country.

The Japan-United States Friendship Act and the subsequent appropriation of the Trust Fund in 1976 authorizes the Commission to spend up to 5% of the principal per year and to retain and invest the interest received on the Fund. We are requesting appropriation of interest already earned and to be earned in the amount of $1,998,000 and the equivalent of $1,200,000 from the Japanese yen fund. With interest earned on the Fund in its early years, the Fund will remain larger than the original appropriation even after the expenditure of these amounts in 1982. The Commission has set its policies to utilize judiciously for important projects all earnings above the fund total originally appropriated. The Commission is operating in the black with the smallest staff of any Federal agency, and we hope to keep it that way.

Since the Commission believes there is a need particularly to strengthen American public understanding of the people, society, culture, and institutions

of Japan, we have initiated discussions with leading officials of the Government of Japan about the possibility of a substantial Japanese financial contribution to the work of the Commission in the United States. We are hopeful that such a contribution may be forthcoming in the interest of both nations.

As you know, the Commission includes among its membership two distinguished members of the Senate, and two leading members of the House of Representatives. The support, interest, and participation of the Congressional Membership has given a unique dimension to the role of the Commission, which also includes the heads of Executive Branch agencies and a broad range of private American leaders in business, the mass media, and higher education and scholarship. This Board has defined its policies to emphasize both the training of area specialists and the creation of broader opportunities for public understanding on a national basis.

In our support of Japanese studies in the United States, the Commission appears to be the first and only Federal agency that has put emphasis on the training of American economists and future business managers in the workings of the Japanese economic system. These programs include curriculum modules on Japanese marketing strategy, business finance, and personnel management for use in business schools and corporate training programs. Special programs have been developed for Americans in the study of Japanese law, in journalism, and in environmental design. Basic institutional support is being provided for language study and library collections.

The Commission's support of Japanese university programs for comprehensive study of the United States is resulting in increased teaching, publication and seminar activity related to the understanding of the United States. In the arts, the Commission in cooperation with other Japanese and American agencies has launched a new program for individual artists and is providing support to cultural exhibitions and performances in fields that are not commercially viable. Programs for American public understanding of Japan include public television, exhibitions, seminars, lectures, and translation support. It is these public activities that are most clearly in need of increased attention.

For public programs in the United States, the Commission is underwriting the preparation and dissemination of unbiased, binational scholarly studies on current economic issues, such as the semi-conductor industry, and differences

in the functions of our investment and trading systems. We are developing seminar and film materials, for example, on the topic of "Japanese productivity, what we can and what we cannot learn from it". The Commission does not promote particular policy positions, but we do believe that the issues require wider and better informed discussion to prevent unnecessary collisions in our economic relationship with Japan.

To further the public discussion of Japan and the Japanese-American relationship, the Commission has solicited and is supporting the development of regional plans in major parts of the country that may provide for professional staff, program development, and local fund raising capability in each region. A number of leading American business, political, and media leaders are assisting us to develop these activities in areas such as Texas, California, the mid-west, the Pacific northwest, the southeast, and New England. We believe these activities can become largely self-supporting once they have demonstrated the usefulness of the programs to the local business, media, and political communities.

The Commission's programs are described in more detail in our annual report for 1980, which I am pleased to present to you. We shall be happy to answer any questions that you may have.

STATEMENT OF THE CHAIRMAN

Mr. WARD. I don't know how much you know about the Commission. It was established in 1975. We have had about 4 years of actual practice at this point. We have a total staff of three, as a matter of fact, one in Tokyo and two in the United States.

Senator WEICKER. You are the two in the United States?

Mr. WARD. I am not. That is one of the two in the United States. He has a secretary. The man in Tokyo has a part-time secretary.

I have listened with great interest to what has been said about the Chrysler Corp. and to the International Trade Commission findings. Interestingly enough, what I have to say this morning relates, I think, in a way to this. I am thinking of the problems of dealing effectively with Japan, whether or not Japanese autos are the main cause of injury to our domestic auto industry.

The Commission was charged originally with an attempt to bring about a better understanding, to the mutual benefit of both countries, through educational and cultural means. We have been doing this in a variety of ways, some of which are quite fundamental. We think, for example, part of our incapacity or lack of competitiveness in dealing with Japan is simply attributable to the fact there are so few American emissaries either on the Government side or private sector side who know Japan, to the extent they know the language, are familiar with the cul-

ture and mode of dealing in that society. We have been trying to do something about this fundamentally by operating for some years and contributing to the cost of what is called the Interuniversity Center in Tokyo, which is probably generally acknowledged today as being the outstanding means of acquiring advanced skills of the Japanese language of any institute in the world.

We are turning out 70 to 80 percent of those who go on in a career sense in the United States to become specialists on Japan. It is traditional, fairly fundamental but, we believe, important. We have begun to look for ways of increasing the competitive skills of the United States in a variety of things more directly relevant to current policy issues. I would like to talk about some of the things we are doing in that context. For example, there is a problem of business training and the extent to which our businessmen who deal with Japan know anything about the country. We have devised recently a series of modules, instructional units that can be inserted into the international business and international economic training programs of major business schools throughout the country. We have had these devised by the country's outstanding economists, and we are now in the process of trying to market these throughout the graduate schools of business in the United States. We have been doing a variety of other things along these lines and some of them I would like to mention just briefly. One has to do, for example, with the basic problems of the economy in dealing with Japan in a long-term structural sense. There are many of these.

We have assembled a group of seven of America's outstanding men on the Japanese economy. It would surprise you to know there are not more than 25 in the country at this time. We have then arranged for them to work with seven counterparts in Japan who are equally important on the Japanese side. And these two groups are studying long-term problems between the two economies with an attempt to devise various ways of dealing with difficulties over a long period of time.

We are not simply analyzing the problem. We are then going to arrange, through Senator Bradley in the Senate and Mr. Leach in the House, to have a presentation to influential groups, groups of Senators, groups of Congressmen and to their staffs, and to the private sector, as well. We are taking on particular problems.

THE SEMICONDUCTOR PROBLEM

You were speaking this morning of the automobile problem. The next problem that comes over the horizon is obviously going to be in the field of semiconductors, and its long-range importance is going to make the automobile issue seem to pale by comparison.

We have assembled, headquartered at Stanford University, a group of electrical engineers, computer specialists, political scientists, and economists specializing in the Japanese field who are working once again with a counterpart group of equal distinction in Japan in an attempt to identify the particular problems that are involved in the semiconductor industry. That is, nontariff barriers, types of degrees of governmental assistance, competitive advantage, access to the technology, latest technology—a variety of issues that are not clearly understood. These are going to come to official negotiations.

We hope at that point to be in position to cast some light on the negotiating agenda, not to solve issues, but make the job easier for countries who are negotiating.

We have just completed a conference held between the representatives of the Japanese Diet and Representatives of the American Congress on the other hand. Senator Roth and Senator Biden attended on behalf of the United States. The attempt here was to try to familiarize both parliaments, if I may use that phrase, with the modes of operation, the structure and constraints under which the other operates. Much of what the two bodies will do has a profound effect on Japan and the same is true with their national diet and the United States. It is important the two bodies become more familiar with each other.

We are concerned about training that is going to facilitate future relationships and to avoid, I hope, in some measure, before it becomes a crisis, the types of problems you were talking about earlier today.

We are trying to do this by producing in the country more businessmen, more lawyers, more generalists and others of this sort, trying to provide them with language training and with culture training of one sort or another.

We do many things, Mr. Chairman, but I wanted to talk about some of these recent developments and explain them to you.

REGIONAL DISTRIBUTION

Senator WEICKER. The Commission supports a 10-State educational project in the Midwest. Last year I inquired about whether this project had been widely available. I believe you expressed some expectation that New England and the Far West would be participating.

Senator Hollings also has a question here which relates to this same area, he states:

> Dr. Ward, you fellows at Stanford are always behind the Big 10 when it comes to this organization. It appears the Commission granted $166,479 and $30,116 in equivalent yen to Big 10 schools, but $208,000 to studies out of Ann Arbor, while the PAC 10 received $66,000. Do you think the Commission is accurate in distributing its grants around the Nation?

This is the same question I asked last year and I again repeat this year.

Mr. WARD. No one year is representative. We don't have enough funding to be equitable throughout the country in a year-by-year sense. I think over a period of time we do our best to——

Senator WEICKER. I gather there hasn't been any movement——

Mr. TENNY. In relation to the television part you asked first, 2 years ago our television grant was to the Southeast, Southern States Network, which includes about 6 or 8 States—Georgia, Mississippi, South Carolina, Virginia, Alabama, and so forth, that bloc of States. That series was used very widely in those States 2 years ago.

Last year a grant was made to the Midwest Public Broadcasting Network which is based in Chicago, but it includes North Dakota, South Dakota, Iowa, it is not limited to the big university States. So far as the general question of support to big universities or east and west coast universities as compared to universities throughout the rest of the country, there are two factors that I would like to emphasize. The first

is that the law which established the Friendship Commission refers to the support of major university library collections and major graduate study centers in Japanese studies, and for historical reasons, these are located primarily on the east coast and in the Michigan-Chicago area and on the west coast and Hawaii. It is unfortunate they are limited to those States. We have put a very high priority on finding ways to extend Japanese studies into other parts of the country, particularly into the Southeast, Texas area, and the Rocky Mountain States.

Senator WEICKER. I would have to point out to you, I think as Senator Rudman might also, Mr. Tenny, neither one of us consider Chicago to be the east coast of the United States.

Mr. TENNY. I apologize for my statement.

If I may say a little bit about our grant to the Association for Asian Studies, this is the national association of scholars of Asia, including Japan and other countries. Our grant to them is for the purpose of their conducting programs in other parts of the country, for sending scholars from these major university graduate study centers through the Great Plains and Rocky Mountains and Texas, Southwest, on 2-week seminars, lecture tours, and for scholars there to enable them to go to Chicago, Columbia, and so forth, to do their research in the libraries.

Several other programs of this nature which we are supporting—one now jointly with the Japan Foundation, which is sending four very distinguished Japanese professors on a 2-week seminar and tour. With our money, people are invited in from neighboring States—North Carolina, in Florida, in Tennessee and in Charlottesville, Va., over the next month.

CONGRESS-DIET COMPARATIVE HANDBOOKS

Senator WEICKER. Please explain the purpose of the $64,000 grant to former Members of Congress.

Mr. WARD. Let me just introduce it and then you can supplement it, I mentioned this a moment ago, Senator, in terms of the importance your activities have, particularly on appropriations——

Senator WEICKER. You mentioned Senator Roth and Biden—neither one are in the category——

Mr. WARD. Would you like to expand on that?

Mr. TENNY. The purpose of the project was and is to develop a comparative handbook of the procedures and role, operating structure of the U.S. Congress and the Japanese Diet, specifically how problems such as trade issues, budget issues, foreign policy, security matters, are handled in the respective parliaments, how the committee systems work, how legislation is introduced, and how it relates to the Executive Department.

The systems, of course, are very different. The Japanese have very little understanding of the role of our Congress in relation to the executive branch in foreign policy and in domestic economic policy. This proposal was very strongly endorsed to us by one of our Commission members, by Mr. Zablocki, chairman of the House Foreign Affairs Committee.

I understand he is issuing the handbook which will be due out this fall as perhaps a report of his committee, but in any case, a series of papers was written by several American experts and several Japanese ex-

perts on the two parliamentary bodies, certain topics. The chief editor on the American side is Frank Valeo, who was Secretary of the Senate for many years. I have read both the English and Japanese papers and I think this should be a very useful product.

USE OF INTEREST EARNINGS

Senator WEICKER. Tell me something. The money that is being appropriated is this money that is earnings on the trust fund that has been set up?

Mr. TENNY. Everything we are asking for is earnings on the trust fund.

Senator WEICKER. And what is the principal amount of the fund?

Mr. TENNY. The annual report here gives the history of the fund. Here is the dollar fund and the yen fund. At the end of fiscal 1980, the amount of the dollar fund was $19,057,886, as compared with the original appropriations of 1976——

Mr. WARD. Page 27.

Mr. TENNY. The fund has grown because in the first year-and-a-half before the Commission had a staff or before the programs were developed, the interest accumulated.

The Commission has expressed in its meetings the intention to use the surplus for useful intelligent programs to an extent to perhaps bring it back down to the level of the original appropriations.

On the yen fund side, page 28, you will also see that the fund is somewhat larger in a real sense than it was when it started.

Of course, in the exchange rate sense it is much larger because the yen is now around 210 to 1. The yen fund is now worth at least $18 million.

Mr. WARD. The fund originated from the Okinawa settlement and from earlier debts. The yen portion comes from so-called GARIOA debts. The rest comes from money we received in terms of the return of Okinawa.

Senator WEICKER. What bothers me is this Commission which is to bring about a great understanding of Japan by Americans, yet we don't even understand what is going on, on our own southern doorstep.

I have got to be candid with you,. I realize this is no immediate cost to the taxpayers of this country and I certainly value good relations between our two nations but certainly both nations are quite able in their own self-interest to engage in meaningful dialog about each other's life styles, customs, and business without a Government agency.

Obviously you probably disagree very strongly with that opinion except we are in a time of limited resources. I really don't see what this Commission adds that can't be accomplished through normal governmental relations and normal business relations.

Mr. WARD. I suppose we can only say in response these things haven't come about until we took the initiative. There is a certain advantage to our small size. We do not duplicate in these programs or other programs in the Federal Government. We have representatives from ICA, State, the Library of Congress, which we use as a means of avoiding duplication. We do it after careful investigation of what they are doing. I think there are some advantages in a number of contacts

that we have in Japan that we have built up over a long period of years. Most of the staff, for example, are both fluent in Japanese. They have had lifetime experiences there, plus we are dealing with governmental agencies, people who pass from one specialization to another. We have a resource of knowledge we can use very effectively. If I may comment on something you said. This has nothing to do with Japan. I feel this very strongly. It is felt strongly in several American universities.

Let me just tell you at Stanford we just made arrangements on a share basis with the Mexican Government to set up over 3 years a series of conferences on a multitude of problems which affect us. They can only do this in concert with the United States.

We are trying to work along the same lines with the Mexicans. I think these things are helpful, these semiofficial approaches to problems, Senator, in terms of not solving problems which only you and the Government can solve, but removing from the agenda of negotiation a variety of things that on the outside are not clear but are subject to clarification.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I have further questions which I will submit for the record for response to the record.

Senator Rudman?

Senator RUDMAN. No questions.

Senator WEICKER. Gentlemen, thank you very, very much.

[The following questions were not asked at the hearing but were submitted to the Commission for response subsequent to the hearing:]

Questions Submitted by Senator Hollings

QUESTION: Why was it necessary for the Commission to launch a major new effort in 1980, including fund raising, for public program activities about Japan in the United States?

ANSWER: The Commission reached the conclusion by 1979 that its academic programs were successful in their objectives of (1) spreading Japanese studies into professional graduate study fields like business, economics, and law (2) assisting American scholars in small or regional universities in introducing Japan into the general college curriculum, and (3) supporting the continued training of Japan experts through certain basic institutions in the field. However, in its programs of cultural communication and public affairs, the Commission concluded that its efforts were too scattered, and most proposals received were accidental, uncoordinated and too local to make the best use of the knowledge and the expexts on Japan in the United States. The Commission therefore put priority on a new effort to assist regional public affairs organizations, interested in Japan, to strengthen their capacity to organize programs of interest and value to the business, political, media, and academic communities in important centers of the country beyond New York and Washington, D. C.

QUESTION: Why does the National Endowment for the Arts have to augment the Commission's activities by $75,000 a year?

ANSWER: Funds from the National Endowment for the Arts are used for the monthly stipends of American artists on the same basis as if those artists were doing creative work in the United States. The National Endowment has indicated they feel it is valuable for American artists to observe the creative traditions of foreign cultures such as Japan. Funds of the Friendship Commission are used for the international travel costs, Japanese language study, and other extra costs of Americans in Japan, and for the English language study and other reception costs of the Japanese artists in the United States. The monthly stipends for the Japanese artists in the United States, and their international travel costs, are paid by the Agency for Cultural Affairs, which is the Japanese Government counterpart of the National Endowment for the Arts. We believe this is a good cost sharing arrangement for all three agencies.

QUESTION: Please describe the Commission's activities with the Asia Foundation that required $110,607 in grants, plus 137,497 in equivalent yen grants?

ANSWER: The Commission provides partial support for two programs of the Asia Foundation in Japan. The first is the Translation Service Center, which trans-

lates articles from the Japanese press and magazines and makes them available to newspaper and magazine publishers in the United States. The articles are selected with the help of an advisory Japanese committee of scholars and editors to reflect the wide range of Japanese domestic opinion and comment on issues of current international interest. The Japanese internal debate is largely unknown and unreported in the United States. These articles are distributed by direct mail and by commercial news wire to the American press, and they are reprinted in at least 85 newspapers in 65 cities in 33 states.

The second project is the supply of American books and other research materials on American Studies in the libraries of ten major Japanese universities for assistance in their teaching of American Studies. The books are ordered by the universities with bibliographic advice, search, and purchase by the Asia Foundation.

Questions Submitted by Senator Weicker

QUESTION: What is the current and projected position of the dollar versus the yen and how will this affect your operation?

ANSWER: The current exchange rate is approximately 209 yen to one dollar. At this exchange rate, the yen fund is equivalent to about $19 million, as compared with its equivalency value of $13 million at time of appropriation in 1976 at rate of 288 to 1. Over the past two or three years, the rate has fluctuated over a range from about 190 to 1 to 240 to 1. We cannot make a precise forecast of the future, but we think it likely to remain within this range.

The exchange rate has no effect on our operations. The dollars are spent in the United States and the yen are spent in Japan. Yen costs in Japan are relatively stable and are not greatly affected by changes in the dollar exchange rate. The Commission does not engage in foreign exchange transactions. The only effect of a change in the rate is in the reporting of dollar equivalency figures after the fact. Since foreign currency appropriation figures are stated in dollar equivalents, it is conceivable that a very dramatic rise in the value of the yen might require the Commission in the future to ask for a larger dollar equivalency appropriation. In fact, however, this would represent no change in the amount of real yen being spent in Japan.

QUESTION: In your justification, you mention that a national business education committee is developing a curriculum on Japanese business methods for introduction in U.S. business schools.

When will this project be completed and how will participating schools be selected?

ANSWER: The project to produce curriculum modules on Japanese Business-Government relations, corporate finance, organizational behavior, business policy, marketing and international business is now complete. The modules will be available to business schools through the Japan Society, New York, from the end of April 1981. A series of regional workshops will be held through 1981 in Atlanta, New York, Michigan, and California to introduce these materials to professors from as many American schools as possible throughout the country. The aim will be to invite participants from all interested schools with MBA programs.

QUESTION: Do you have any information on the extent to which colleges and universities in the U.S. offer such programs:

ANSWER: There is not one business school in the United States which currently offers a program on Japanese business. Through a challenge grant of one-to-three offered by the Commission to the University of Michigan in 1980, that University has announced plans to appoint a qualified professor and start a program in Japanese business during the 1981-82 academic year. In the meantime, the Commission's program has contributed to the production of case studies of Japanese business which are now being used as comparative references in a few isolated courses around the country.

BACKGROUND: The Commission sponsors a number of programs to broaden public interest and discussion of issues concerning Japan. For instance, seminar programs on the Japanese economy, productivity, and the semiconductor industry.

QUESTION: I see that the Commission has proposed that the Japanese Government and business assume a share in the cost of developing activities in the U.S. to promote cultural communication and public information.

Does the Japanese Government sponsor any programs similar to those of the Commission and how was your suggestion received?

ANSWER: The Japanese Government through the Japan Foundation provides assistance to American scholars and universities in the field of Japanese studies in the United States. The Japan Foundation also supports cultural performances by Japanese performing groups touring the United States. These programs are complementary to, and are well coordinated with, the Commission's programs in the Japanese studies and Japanese performing arts categories.

Apart from a few small contributions through the Japanese Embassy and consulates in the United States, the Japanese Government does not have any program of assistance to American public affairs organizations for public discussion of issues concerning Japan. Both the Japanese Government and Japanese business leaders have listened sympathetically to the Commission's suggestions that our new regional program to assist American organizations develop public discussion activities should be made into a binationally supported program in this country, for the good of both nations.

QUESTION:

What is the extent of Japanese and American business participation in bicultural programs:

ANSWER:

Japanese and American business firms have made substantial individual contributions to some universities, performing arts, and television activities. In many but not all parts of the country, business contributions to public affairs organizations like Japan-America Societies, which are dedicated to an improved dialogue with Japan, have been minimal. By providing for preliminary staff support for organizing professional programs on Japan of interest to business personnel, Commission start-up funds can lead directly to larger business contributions for such activities in the future.

SUBCOMMITTEE RECESS

Senator WEICKER. The subcommittee will recess until March 10 when we will consider the request of the Supreme Court and the Judiciary budget.

[Whereupon, at 10:36 a.m., Thursday, March 5, the subcommittee was recessed, to reconvene on March 10.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

TUESDAY, MARCH 10, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:35 a.m., in room S-146, the Capitol, Hon. Lowell Weicker (chairman) presiding.

Present: Senators Weicker, Cochran, Rudman, Specter, Hollings, and Inouye.

THE JUDICIARY

SUPREME COURT OF THE UNITED STATES

STATEMENTS OF:
HON. WILLIAM H. REHNQUIST, ASSOCIATE JUSTICE
HON. LEWIS F. POWELL, ASSOCIATE JUSTICE

ACCOMPANIED BY:
MARK W. CANNON, ADMINISTRATIVE ASSISTANT TO THE CHIEF JUSTICE
ALFRED WONG, MARSHAL
DINA ZUCCONI, DEPUTY MARSHAL
JAMES R. DONOVAN, DIRECTOR OF DATA SYSTEMS

BUDGET REQUEST

Senator WEICKER. This morning we will begin our hearing with the Supreme Court of the United States.

The total request for the Supreme Court for fiscal year 1982 is $12,862,000, a decrease of $620,000 under the adjusted appropriation for fiscal year 1981.

There are two appropriations for the Supreme Court, the first of which is salaries and expenses. The request for salaries and expenses is $11,208,000, a decrease of $646,000 under the adjusted appropriation for the current fiscal year, and provides for 316 permanent positions, a reduction of 9 positions.

Appearing on behalf of this request are Justice Powell and Justice Rehnquist of the Supreme Court. Justice Rehnquist, we will be pleased to hear your statement.

PREPARED STATEMENT

Justice REHNQUIST. Mr. Chairman and members of the subcommittee, we filed a statement with you, as well as our budget estimates. If you would like me to read it, I would be happy to. Otherwise, we would be happy to simply file it and respond to questions.

Senator WEICKER. All right. We will take your statement and include it in its entirety in the record at this point.

[The statement follows:]

STATEMENT OF WILLIAM H. REHNQUIST

We appreciate this opportunity to appear before you in support of the budget requirements of the Supreme Court for fiscal year 1982. I will make only a brief statement and then we shall endeavor to answer any questions you may have or provide you with any additional information you may desire.

Our total budget estimate for fiscal year 1982 is $12,862,000. This is a net decrease of $620,000 under the budget authority for 1981. We are requesting a total of $11,208,000 for salaries and expenses and $1,654,000 for care of the building and grounds.

The estimate for salaries and expenses for fiscal year 1982 is $11,208,000, a net decrease of $646,000 under the amount appropriated for 1981 after taking into account the proposed supplemental for pay costs in the amount of $714,000. This supplemental takes into account pay increases effected October 1980 pursuant to Public Law 91-656 and includes increases for the Chief Justice and Associate Justices in accordance with the December 15, 1980 opinion of the Supreme Court in *United States* v. *Will*. The net decrease of $646,000 includes adjustments to base and one program increase.

The adjustments to base for a net decrease of $650,000 include increases totaling $201,000 due primarily to rising costs of official travel, postage and fees, services, supplies, and equipment. The increases are of an uncontrollable nature. These increases are offset by a total estimated savings of $851,000 for three items of decrease. The first item of reduction is for $136,000, deducted due to the abolishment of nine vacant permanent positions. The total number of permanent positions for the Court is reduced from 325 to 316. The second reduction of $515,000 is for the nonrecurring costs of purchasing the work processing equipment. It is anticipated that the major purchases of this equipment will occur during the latter part of fiscal year 1981. The third item of reduction is for $200,000 for estimated savings in the cost of printing Supreme Court reports.

The only program increase is for $4,500 for the rental of one additional passenger motor vehicle. This figure includes the costs of rental, maintenance, and gasoline and oil. This request would increase the motor pool from four to five vehicles, in addition to the automobile assigned to the Chief Justice.

An item worthy of notation which does not appear in the annual budget relates to collections made by the Court. Each year the Court deposits into the general fund of the Treasury the fees which have been collected in the Clerk's Office. During fiscal year 1977 through 1979 the deposits averaged $354,000. In fiscal year 1980 the amount increased to $555,000, and during fiscal years 1981 and 1982 it is estimated that $950,000 will be deposited in the general fund of the Treasury. The large increases in our annual deposits are attributed to the increase in fees charged by the Clerk of the Court, which was effected on June 30, 1980. As you are aware, the fees are collected for such services as the docketing of cases, filing petitions, and admissions to the Supreme Court Bar. In theory, if the estimated $950,000 the Court will be depositing into the Treasury in fiscal year 1982 would be applied to our budget figures, it greatly reduces our budget request.

The budget estimate for care of the building and grounds is $1,654,000, an increase of $26,000 from the budget authority for 1981. I will defer to the Architect of the Capitol, Mr. George White, for such detailed discussion of the projects in this account as may be desired.

Mr. Chairman, I think we have again submitted a prudent budget. There are no proposed increases for salaries and the total number of positions for the Supreme Court is reduced from 325 to 316.

INCREASE IN COURT CASES

Senator WEICKER. Of course, if there is anything you want to say, I don't want to foreclose you here. If not, we will just get to the questions.

From materials submitted with the budget, it is apparent that the number of cases filed with the Court is continually increasing. Do you have an estimate of the number of cases which will be filed during this term?

Justice REHNQUIST. There has been an increase, as I recall, ranging in the neighborhood of 11 percent in the filings over the past year.

It is a little misleading to think of the filings as all cases which have to be decided by the Court since we deny certiorari in about 96 or 97 percent of the cases. Nonetheless, when you increase the number of filings by 400 or 500, you are going to statistically increase the probability of cases having to be heard and decided by the Court by a certain amount, too, although it is much less than would appear from the actual number.

REDUCTION IN COST OF PRINTING OPINIONS

Senator WEICKER. I see you anticipate a reduction of $200,000 in the cost of printing and binding Supreme Court reports. At a time when other costs are escalating, to what is this saving attributed?

Justice REHNQUIST. I think it is attributable to the fact that when we get our ATEX machines in place, we will exercise our option to purchase them instead of simply leasing them, and thereby relieve the Government Printing Office and its outlet printing system of all the printing of slip and bench opinions.

Starting with the October term next year, possibly, the actual reports will be printed on the computer system rather than the standard typographical system.

ABOLITION OF NINE POSITIONS

Senator WEICKER. Last year Senator Hollings was concerned about the number of secretarial positions at the Court and wanted to be sure that you were adequately staffed. I see that you are abolishing nine secretarial positions this year. Are you sure that, given increasing demands on the Court, your remaining resources will be adequate?

Justice REHNQUIST. It is largely a chamber-by-chamber decision so far as the individual Justices are concerned. For example, Justice Stevens has two law clerks and two secretaries. The Chief Justice has I think at least one, perhaps more than two more secretaries, but he has a good deal more responsibility in the administrative area as chairman of the Federal Judicial Center and of the Judicial Conference of the United States than the associates do. Justice Brennan, for example, has only one secretary and only wants one secretary.

Senator WEICKER. I think the point we are trying to make, at least it has been consistent ever since Fritz and I have worked together on this committee, is we are fully appreciative of the tremendous workload which the Justices are carrying. Whether it is in terms of your law clerks or whether it is in terms of your secretaries, we want to be certain that you have all the assistants that you need so that you can use

your minds to the matters at hand. I think we have been uniform in our attitudes on that over the years. I realize there is budget-cutting fever and everything else in this town. But that principle doesn't vary. I just want to be certain that you feel entirely comfortable with what you have in the way of your staff.

Justice POWELL. Mr. Chairman, may I speak to that for a moment?

Senator WEICKER. Yes.

Justice POWELL. You may recall that when we indicated here perhaps 3 years ago that there was a need for additional secretaries we did not know then whether the word processing equipment we had just commenced to experiment with would prove to be successful.

The big difference has been the installation of that equipment in all of our chambers. As Justice Rehnquist stated, we are now in the process of integrating the equipment in chambers with the computerized print shop. The result of this is the need for secretaries in chambers has been substantially lessened. So I think it is fair to say that in releasing the nine positions that this budget proposes, there will be no detriment to the chambers.

LAW CLERKS

Senator WEICKER. What about the situation on law clerks? Is everybody satisfied on that count?

Justice POWELL. Well, Bill, you can speak for yourself. I don't have room enough to have any more clerks. I don't think I could manage any more, either, Mr. Chairman.

Justice REHNQUIST. Lewis, you have four, don't you?

Justice POWELL. I have four.

Justice REHNQUIST. I have three. Justice Stewart has three. Justice Stevens has two. I think almost everybody else has four.

We are fully sensitive of the committee's willingness to allow us to have more law clerks if we want them. But as Justice Powell says, it is almost a question of management. With the ATEX printing, law clerks who are quite resentful of having to either write out their own stuff or make due with one secretary for three or four law clerks are very interested in the printing machines themselves and are willing to do some of their own redrafting and reediting on the machine without the assistance of the secretary.

Justice POWELL. Five of the chambers have four law clerks. The Chief has five, for the reason Justice Rehnquist has indicated. So the numbers do vary.

Senator WEICKER. Senator Hollings?

Senator HOLLINGS. They are all listed. You have 16 vacancies I think, Mr. Justice; isn't that correct?

Justice POWELL. Yes; I think that is correct.

[The information follows:]

SUPREME COURT OF THE UNITED STATES

Total Number of Permanent Positions 316

Summary as of March 6, 1981

OFFICE AND JOB TITLE	NO. OF POS.
JUSTICE'S OFFICES	73
CHIEF JUSTICE'S OFFICE	12
Chief Justice	1
Secretary to Chief Justice	1
Assistant Secretary	1
Conference Administration Coordinator	1
Special Assistant	1
Law Clerks	4
Secretary to Special Assistant	1
Messenger-Clerk	1
Chauffeur	1
JUSTICE BRENNAN'S OFFICE	7
Associate Justice	1
Secretary	1
Law Clerks	4
Messenger	1
JUSTICE STEWART'S OFFICE	7
Associate Justice	1
Secretary	1
Law Clerks	3
Assistant Secretary	1
Messenger	1
JUSTICE WHITE'S OFFICE	8
Associate Justice	1
Secretary	1
Law Clerks	4
Assistant Secretary	1
Messenger	1
JUSTICE MARSHALL'S OFFICE	8
Associate Justice	1
Secretary	1
Law Clerks	4
Assistant Secretary	1
Messenger	1

OFFICE AND JOB TITLE	NO. OF POS.
JUSTICE BLACKMUN'S OFFICE ...	8
Associate Justice	1
Secretary	1
Law Clerks	4
Assistant Secretary	1
Messenger	1
JUSTICE POWELL'S OFFICE	8
Associate Justice	1
Secretary	1
Law Clerks	4
Assistant Secretary	1
Messenger	1
JUSTICE REHNQUIST'S OFFICE ...	7
Associate Justice	1
Secretary	1
Law Clerks	3
Assistant Secretary	1
Messenger	1
JUSTICE STEVENS' OFFICE	6
Associate Justice	1
Secretary	1
Law Clerks	2
Assistant Secretary	1
Messenger	1
Law Clerks - Unallocated	2
ADMINISTRATIVE ASSISTANT TO THE CHIEF JUSTICE	6
Administrative Assistant	1
Research Associate	1
Staff Assistant	1
Secretary to A.A.	1
Assistant Secretary	1
Secretary-Receptionist	1
PERSONNEL & ORGANIZATIONAL DEVELOPMENT OFFICE	3
Personnel Officer	1

OFFICE AND JOB TITLE	NO. OF POS.
PERSONNEL & ORGANIZATION DEVELOPMENT OFFICE (CONTINUED)	
Personnel Assistant	1
Personnel Secretary	1
DATA SYSTEMS	7
Director	1
Programmer/Analyst	1
Printing Specialist	1
Publications Clerk	1
Phototypesetter	3
LEGAL OFFICE	4
Legal Officers	2
Legal Research Assistant	1
Administrative Secretary	1
PUBLIC INFORMATION OFFICE	3
Information Officer	1
Assistant to PIO	1
Secretary	1
CURATOR'S OFFICE	4
Curator	1
Assistant	1
Tour Director	1
Secretary	1
SECRETARIAL SUPPORT UNIT	6
Managing Secretary	1
Assistant Managing Secretary	1
Secretaries	4
CLERK'S OFFICE	29
Clerk	1
Chief Deputy Clerk	1
Deputy Clerks	2
Assistant Clerks	23
Computer Programmer	1
Computer Operator	1
REPORTER OF DECISIONS	10
Reporter	1
Assistant Reporter	1
Publications Officer	1
Asst. Publication Officer	1
Technical Assistants	2
Staff Assistants	2
Secretary	1
Clerk-Messenger	1

OFFICE AND JOB TITLE	NO. OF POS.
LIBRARY	18
Librarian	1
Associate Librarian	1
Assistant Librarians	2
Director of Technical Services	1
Research Librarians	3
Special Collections Asst.	1
Secretary to Librarian	1
Special Library Assistant	2
Acquisitions Technician	1
Catalog Technician	1
Senior Under Library Asst.	1
Under Library Assistant	1
Acquisitions Clerk	1
Cataloging Clerk	1
MARSHAL'S OFFICE	22
Marshal	1
Chief Deputy Marshal	1
Deputy Marshal	1
Assistant Marshals	2
Staff Assistants	2
Secretary	1
Receptionist-Clerk	1
Clerical Assistant	1
Head Messenger*	1
Messengers*	11
*Clerks-Courtroom Attendants-Tour Guides-Postmen-Drivers	
MISC. - MARSHAL'S OFFICE	8
Registered Nurse	1
Physiotherapist	1
Supply Technician	1
Furniture Controller	1
Food Preparation Specialist	1
Barber	1
Telephone Operators	2
CARPENTER SHOP - MARSHAL'S OFFICE	7
Cabinetmaker	1
Woodworker I	2
Finisher	1
Woodworker III	2
Woodworker IV	1
POLICE FORCE - MARSHAL'S OFFICE	83
Captain	1
Lieutenants	3
Sergeants	5
Officers - PFC	55
Privates	18
Administrative Clerk	1

OFFICE AND JOB TITLE	NO. OF POS.
LABOR FORCE - MARSHAL'S OFFICE	33
General Foreman	1
Labor Foreman (Day)	1
Labor Foreman (Night)	1
Laundress	1
Laborers	25
Elevator Operators	4
PART-TIME PERMANENT POSITIONS	
Library	
Research Librarian (60 hrs. bwkly)	1
MARSHAL'S OFFICE	
Telephone Operator (40 hrs. bwkly)	1
HOUSEKEEPING FORCE-MARSHAL'S OFFICE	
Housekeeping Supervisor (72 hrs. bwkly)	1
Assistant Supervisors (70 hrs. bwkly)	2
Seamstress (60 hrs. bwkly)	1
Housekeepers (60 hrs. bwkly)	22
TOTAL PART-TIME PERMANENT	28
TEMPORARY INDEFINITE APPOINTMENTS	
OFFICE OF THE ADMINISTRATIVE ASSISTANT TO THE CHIEF JUSTICE	
Secretary - Intermittent (Intermittent - when actually employed)	1
DOCUMENTARY HISTORY OFFICE	
Resident Director	1
Resident Associate	1
TOTAL TEMPORARY INDEFINITE APPOINTMENTS	3

VACANCIES AS OF MARCH 6, 1981

OFFICE AND JOB TITLE	NO. OF POS.
JUSTICE'S OFFICES	
Law Clerk - Justice Stewart's Office	1
Law Clerk - Justice Steven's Office	1
CLERK'S OFFICE	
Assistant Clerks	2
MARSHAL'S OFFICE	
Privates - Police Force	11
Laborer	1
CURATOR'S OFFICE	
Assistant to Curator	1
SECRETARIAL SUPPORT UNIT	
Secretary	1
TOTAL VACANCIES	18*

* Less two Temporary Indefinite appointments for a net of 16 Vacancies.

COMPUTER WORK FORCE

Senator HOLLINGS. I am not certain about it. I wish a statement could be made or a judicial finding that when we put in a computer it actually lessens the personnel requirement. We haven't found that. That is the justification every time. We computerized the Government, but personnel keeps going on right through the roof. This is the first instance really for this. I am serious.

Justice REHNQUIST. The law clerks in my chambers—and I think you found it to be the same, Lewis—whereas before the computers were put in, wanted very much to have a secretary to take dictation. Most of us set up some sort of arrangement, but it was always a shared service type of thing. When we put in the computerization and they can do their own editing, it is kind of almost like an electronic plaything in a way. They can move sentences back and forth and are willing to do it themselves rather than simply dictate to a secretary and have the secretary do it.

Justice POWELL. Senator, my own feeling in private practice was exactly as you indicated the Government experience has been. That is, computers resulted in an increase in costs. We may end up there, but as of today, we are rather optimistic that substantial savings will result.

Senator HOLLINGS. There is an adjustment to base of $37,000 for increased agency contributions for health benefits. Can you tell us why the increase in January was 15 percent for the Supreme Court and 10 percent for the other judicial agencies?

Miss ZUCCONI. The increase in January 1981 for agency contributions for health benefits was 16.8 percent. The six plans which determine the Government contribution for an enrollment in the health insurance program, the service benefit plan, the indemnity benefit plan, the American Postal Workers Union plan, the National Association of Letter Carriers health benefit plan, Kaiser of Northern California, and Kaiser of Southern California, increased their rates for 1981. The increases, which range from 10 to 22 percent depending on the plan, reflect the continued rise in the cost of medical care. Based on the increases of these six plans, the Government contribution for 1981 was increased by 16.8 percent over that for 1980.

The increase of $37,000 requested for fiscal year 1982 includes actual agency contributions for the number of Supreme Court employees enrolled for either the high or low options, and family or individual coverages. The estimate was computed on an actual enrolled basis and not a percentage basis.

Senator HOLLINGS. Also, are you budgeting in advance for an anticipated January 1982 increase in costs? If so, what is the cost of this provision for 9 months in fiscal year 1982?

Miss ZUCCONI. The sum of $16,000 was included in this budget request for an anticipated increase for January 1982, for 9 months in fiscal year 1982.

INCREASE FOR TRAVEL

Senator HOLLINGS. The only increase I see is in the one of travel. I am not too nettled by it. I think the Court should travel. For most people we are cutting back on travel a little.

Do you have any comment on that, Mr. Justice? You are going from $32,000 to $61,000 in travel.

Justice REHNQUIST. Yes; I think it is just the general increase in fares and perhaps more required or thought to be beneficial functions for the Justices and the members of the Supreme Court staff to get out of Washington and go out and learn something as well as contribute something.

Justice POWELL. Dina, does the travel item include travel expenses we have to pay for counsel?

Miss ZUCCONI. Yes; it includes the attorneys' travel in informa pauperis cases.

Justice POWELL. When we appoint counsel for indigents, we pay the expenses of those lawyers to come to Washington. I think that is the largest item in the budget for travel, isn't it?

Miss ZUCCONI. No; the estimate for that is just $4,000.

Justice POWELL. I am surprised.

Justice REHNQUIST. I am surprised, too.

Miss ZUCCONI. The total estimate for travel is $61,000 for 1982.

Senator WEICKER. What was it last year?

Miss ZUCCONI. $32,500. It is a $28,500 increase.

Senator WEICKER. Of course, those fares have jumped.

Miss ZUCCONI. The main reason is the increase in per diem, the per day allowance. The per diem for actual expenses has been increased from $50 per day to $75 per day, depending on the geographic area.

Justice POWELL. That is a standard increase?

Miss ZUCCONI. That is correct.

Senator WEICKER. Senator Rudman?

Senator RUDMAN. I don't have any questions, Mr. Chairman.

Senator WEICKER. Senator Inouye?

Senator INOUYE. No questions.

Senator WEICKER. Senator Specter?

SPEEDY TRIAL ACT

Senator SPECTER. If I may. I am not certain that this is the preferable forum, but I do have a question which I would like to submit to the Justices. That is, in evaluating the resources available for the Court and the speed of disposition of cases, the question on my mind is whether it might be appropriate for the Congress to consider a speedy trial analogy to appellate court practice that we now have in effect for the disposition of criminal cases in the U.S. District Courts. I would be interested in your thought on that.

Justice REHNQUIST. My reaction, Senator Specter, is so far as the Supreme Court is concerned, we are not faced with the same problem of delay as the Courts of Appeals and the District Courts are. Our problem is almost the opposite sometimes, that we will grant certiorari in a case in, say, January or February and hear it argued in April and decide before July 1.

The rules of the Court provide a certain amount of time, as you are undoubtedly familiar, for filing of petitioner's brief and respondent's brief and a reply brief, so that frequently we find that the clerk has to encourage and kind of press people to get ready to have a case argued a little ahead of schedule.

I think the principal delays come from the vast volume of litigation that is handled in the District Courts and in the Courts of Appeals and then in the collateral attack under 2254, those statutes.

Senator SPECTER. What would your thought be as to the propriety of such an approach for the Courts of Appeals then?

Justice REHNQUIST. Never having been a Court of Appeals Judge, I certainly wouldn't want to speak for them.

Justice POWELL. I think you may have a witness later this morning, Judge Clark, from the fifth circuit, who would be better prepared, I am sure, than either of us.

I would say this has been our thought, Justice Rehnquist. Although we are under very heavy pressure throughout the 10 months that we stay in Washington, we conclude action on every case we take during that time before we adjourn, usually around the 1st of July. So a speedy trial provision would not affect the way we operate, but it might have a profound effect on Courts of Appeals and District Courts.

As Justice Rehnquist says, the basic problem in the Federal system is that it gradually is being overwhelmed by litigation that is unprecedented—unprecedented in terms of our own history and also in what goes on in other countries.

I just happened to be reading, just by sheer accident, a brief recently that illustrates this problem. It came, Senator, from your State of Hawaii. It talks about the explosion, and that is the term in this brief, in section 1983 cases filed by prisoners. The brief states that in 1966, 218 prisoner cases were filed in Federal courts. In 1980 there were over 12,000. That is 5 percent of the total caseload of the U.S. District Courts. Many of those cases are frivolous. The Chief Justice has mentioned in a speech that a case came all the way to the U.S. Supreme Court involving an alleged theft of a package of cigarettes. The District Judge tried to dispose of the case by offering the prisoner a couple packages of cigarettes. But he wanted to litigate it.

Once these cases get into the Federal system, they often come all the way up to our Court.

I think the Congress of the United States needs to look at what often happens in section 1983, although it is true that a number of important civil rights cases are brought under it. The problem of how you control the frivolous use of our courts under that statute, and how we also may leave it available for people who need access for legitimate civil rights claims. I have no solution to offer today. But you asked the question.

Senator HOLLINGS. Would the Senator yield?

Senator SPECTER. Yes.

Senator HOLLINGS. I think the Senator has a point on the emphasis of expediting criminal trials. It has put a burden on delay, in essence, in civil cases. The drug fellows who have been working in Florida hit us about November, December, and January. Apparently they are just backing up tankers off South Carolina and off-loading them. We think we get maybe 10 or 20 percent coming through and 80 percent gets by us. In any event, they are trying to break down our court system.

No. 1, we need an extra courtroom. We have been borrowing the State court and have had to move in another Federal judge. So we have had three Judges working around the clock in Charleston. That has

been going on since November. So they haven't been doing any since November.

However, Senator Specter has a point. What are we going to do if we give the speedy trial to the criminals and forget about the civil cases?

Justice REHNQUIST. That was the situation in the Southern District of California. For 2 years there was not a civil trial because the Speedy Trial Act says the courts have to take over the criminal prosecution. Civil cases were just not called for trial, even though they were ready.

Senator HOLLINGS. Yes.

Mr. CANNON. Could I add another couple of problems that do occur when the Congress moves in the direction of the Speedy Trial Act? The first is the total pushing aside in many cases of the civil cases, which is important, as Justice Rehnquist mentioned. Second is the very high cost. Somebody might be able to give a better figure, but I would roughly guess that probably $30 million has had to be spent for the computerization and administration required for the Speedy Trial Act. Remember that you have to define which calendar days apply toward the limit and which ones do not in each criminal case, which means people are keeping track of every case that comes in. The third problem is a judgeship shortage. There was a delay for 8 years in any new judgeships and 10 years for any new Courts of Appeals judgeships.

If the Congress really wants to help with this problem, they will shortly have the chance to consider a request based on the traditional statistics for 43 new judgeships that will be decided by the Judicial Conference later this week.

Senator SPECTER. I raise this question realizing the sensitivity of congressional action on what may be a judicial prerogative when you start to talk about limitation of time. It has been applied in the Trial Courts. I have heard questions raised as to the appellate procedure, perhaps with emphasis on the Courts of Appeals. But the problem is obviously a massive one, as we all agree, and has to be a fact in quite a number of lines with the question of additional judgeships or questions of Super Courts of Appeals to relieve burdens from the Supreme Court.

But one of the issues that Chief Justice Burger has focused on is the issue of delay. There has been action at the Trial Court level on the subject. I know of no action which has been directed to it at the level of the Courts of Appeals or at the Supreme Court level. I have some question as to whether it would be appropriate, perhaps at the Supreme Court level, perhaps to start talking about limitations on time in the criminal case.

One of the concerns that I have seen as a practicing lawyer is the delays on the appellate level and the learned and extensive opinions which come from the Courts of Appeals and from District Courts which some of the practicing lawyers question in terms of the necessity for an appropriate judicial response to the kinds of issues which are involved which take a tremendous amount of time and raise a question as to the justification for dealing with the issue which is presented.

If the Courts of Appeals, or the Supreme Court for that matter, were faced with some time limitation, if it is appropriate for the Congress to speak to that issue, then there might be some accommodation, a reduction in the length of opinions or the scholarliness of opinions, which

would have some reduction in some beneficial lines but perhaps would be justified to get the cases moving, criminal and civil.

Justice REHNQUIST. Our Court has the luxury of almost completely discretionary jurisdiction, which is not afforded to the Federal Courts of Appeals or to the district courts. That is, the cases that we hear on their merits and decide I don't think have varied in the 9 years that Justice Powell and I have been on the Court more than 10 or 15 percent one way or the other, 140 to 160 about, because we can simply deny certiorari and that is the end of it; whereas, the Courts of Appeals and the district courts have to take every case that is filed and dispose of it in some way.

Senator SPECTER. Justice Rehnquist, doesn't it take you a great amount of time to deny certiorari in all of these cases?

Justice REHNQUIST. Not from my point of view. Most of them are frivolous.

Senator SPECTER. But you have to make that determination.

Justice REHNQUIST. Yes; but it doesn't take long with a lot of them. There are people who have lost four different times in four different courts and now all they have done is add the judges who have decided against them in the last round of their litigation as defendants in this case. [Laughter.] While the frivolous ones are by no means the largest part of our docket, are a very large part of our docket; they are ones that no single member of our Court considering the ideological division on it would feel are worth granting a hearing on.

Senator SPECTER. Are there statistics on the average length of time between docketing in the Supreme Court and decisions?

Justice REHNQUIST. There probably are. I don't have them. I would say that we have them presented at each conference, and a case generally docketed before the middle of January of a particular year in which certiorari is granted will be heard and decided before July 1.

Senator SPECTER. Is it a very infrequent occurrence for a case to be carried over from one term to the next?

Justice REHNQUIST. Very unusual. It happens, but it is very unusual.

Justice POWELL. May I supplement that response, that cases vary widely in terms of complexity and importance. We are talking about the cases we accept for argument. Those of you who file in court know sometimes a case argued in October is not brought down until June or perhaps later. Bakke, for example, was argued in October and brought down July 2 because it was an enormously difficult case. So I don't think statistics would be meaningful, certainly at our level.

I would also observe that the Courts of Appeals, in order to accelerate the process, most of them have rules—and the fifth circuit, as my friend Judge Clark can tell you, has a rule very much criticized by the bar that enables it to dispose of a substantial percentage of its cases with no opinion at all. But a lawyer, particularly one who loses a case, likes to know why he lost it. It gives him something to show his client and explain how wrong the Judges were. [Laughter.]

I will make one other observation. As you know from our printed opinions, we don't always agree with each other. I don't agree with my brother, Bill Rehnquist, when he says handling certiorari petitions is easy. They come in at a rate now of about 90 a week. It takes me on

the average at least 1 day in the week to dispose of them, and I work 6½ days every week and 10 months of the year. The number of filings expected this year will be pretty close to 4,400, 4,500 certiorari petitions.

Justice REHNQUIST. I don't mean to say that 100 percent of them were easy. [Laughter.] But I think you want to get down to a level of 50 or 60 percent that are.

Justice POWELL. I agree with that. But all I am saying is the tradition of the Court—I think this ought to be changed also—is that each Justice, all nine of us, has to vote on every doggone petition that comes up there. It takes a day of my time. I don't think that is very efficient use of it.

Senator SPECTER. One last question, Justice Powell, that you raised about the fifth circuit rule of permitting decisions without opinions. Do you think it might be appropriate to encourage bench opinions where, as I understand the English practice is, the Judges confer and make a decision, and if not immediately then, shortly thereafter, whenever they decide on it, just to give a simple statement of their reasons?

Justice POWELL. Of course, that is done in the British system, but that is after extensive oral argument. I would prefer one of the circuit court judges or district judges, they are here today, to respond to that. My own experience with an off-the-cuff opinion is it is not entirely inspiring. [Laughter.]

Senator SPECTER. Any worse than no opinions at all?

Justice REHNQUIST. I think the second circuit still does affirm in open court from the bench, just after a very brief 2- or 3-minute conference between the three judges.

Senator SPECTER. Trial judges are now giving their opinions on sentencing in a much more informal way. While they are not learned and not elaborate, they do tell the litigants what the reasons are, the essence of it, and it really moves along the proceeding with some speed.

Thank you, gentlemen.

Thank you, Mr. Chairman.

Senator HOLLINGS. Mr. Chairman, I think we ought to increase the travel and send this twosome around. They are very informative. [Laughter.]

Justice REHNQUIST. A road show. [Laughter.]

LEGAL SERVICES

Senator WEICKER. Just one last question, since we have commented on the judicial system. I don't know if you feel free to comment, but we have the potential of reducing the caseload in a rather dramatic fashion here in the proposal of the administration to eliminate the Legal Services Corporation. I am not so sure that that is the way it ought to be handled. I was wondering if either of you would like to comment on that proposal or whether you feel you can comment on it.

Justice REHNQUIST. For myself, I would be very loathe to comment on a legislative proposal made by the Executive to the legislative branch. In our cases where we grant certiorari, we generally appoint counsel to represent an indigent defendant so that I don't think it would affect us very much.

Justice POWELL. I would make this observation, not on the current situation at all, because I am not familiar with it, but I was very much in favor of the legal services program for the poor when I was with the American Bar Association as president. The American Bar Association supported it at that time and I supported it until I became a Judge. I have not kept up with it since, and I have no information as to how well it is operating now.

Senator WEICKER. Are there any further questions? If not, it is always a pleasure to have you here. I wish we could spend a little more time.

Justice REHNQUIST. Our pleasure.

Senator WEICKER. Thank you very much.

CARE OF BUILDING AND GROUNDS

STATEMENT OF GEORGE M. WHITE, ARCHITECT OF THE CAPITOL

ACCOMPANIED BY:

WILLIAM L. ENSIGN, ASSISTANT ARCHITECT OF THE CAPITOL
WILLIAM F. RAINES, JR., ADMINISTRATIVE ASSISTANT
J. RAYMOND CARROLL, DIRECTOR OF ENGINEERING
EMANUELE CRUPI, BUDGET OFFICER

BUDGET REQUEST

Senator WEICKER. Our next request is that of the U.S. Supreme Court, care of the building and grounds.

The amount requested is $1,654,000, an increase of $35,000 over the 1982 base, and provides for 33 permanent positions for the structural and mechanical care of the U.S. Supreme Court building and grounds.

Appearing on behalf of this request is George M. White, Architect of the Capitol. He is accompanied by Emanuele Crupi, Budget Officer.

Mr. White, we will be pleased to hear your statement with regard to this request.

Mr. WHITE. Mr. Chairman, I thank you. I have a brief statement.

As you know, the Architect of the Capitol, by authority of the act of May 7, 1934, is responsible for the structural and mechanical care of the U.S. Supreme Court building and grounds. We are not charged with responsibility for custodial care, which is under the jurisdiction of the Marshal of the Court and is provided for in another appropriation.

For 1982, we have requested a total appropriation of $1,654,000. This represents a net increase of $26,000 over the total of $1,628,000 for 1981, which includes pending pay and program supplemental requests in the amount of $102,000. Gross increases requested are $76,000, which have been reduced by a fiscal year 1981 nonrecurring item of $50,000.

In addition, Mr. Chairman, I have requested two program supplementals for fiscal year 1981. They are the acquisition of property as an addition to the grounds of the Supreme Court for $645,000, which was authorized in the last Congress, and $42,000 for an additional amount projected for the purchase of electrical energy from the Potomac Electric Power Co.

PREPARED STATEMENT

That is a very brief statement. The rest of it can be submitted for the record, Mr. Chairman.

[The statement follows:]

STATEMENT OF GEORGE M. WHITE

I am pleased to appear before the committee to present the fiscal year 1982 appropriation request for the care and maintenance of the Supreme Court building and grounds.

I thought it might be appropriate, if it is agreeable, Mr. Chairman, to present a brief summary of the request and then answer any questions that you may have concerning the detail.

As you know, the Architect of the Capitol, by authority of the Act of May 7, 1934, is responsible for the structural and mechanical care of the U.S. Supreme Court building and grounds. We are not charged with responsibility for custodial care, which is under the jurisdiction of the Marshal of the Supreme Court and is provided for in another appropriation.

In our prepared justifications for 1982, we have requested a total appropriation of $1,654,000. This represents a net increase of $26,000 over the total of $1,628,000 for 1981, which includes pending pay and program supplemental requests in the amount of $102,000. Gross increases requested are $76,000, which have been reduced by a fiscal year 1981 nonrecurring item of $50,000.

Increases requested are: $17,000 for annualization of Civilian Pay Act and wage-rate pay increases effected in October 1980, related benefits and within-grade salary advancements authorized by law; $4,000 to offset increased costs due to inflation for goods and services procured for annual recurring maintenance items such as painting, general repairs, and air-conditioning maintenance; $20,000 to offset projected increased rates for electrical energy; and $35,000 to initiate a new maintenance program for exterior pointing and caulking of masonry joints of the Supreme Court Building.

PROGRAM SUPPLEMENTAL

In addition, Mr. Chairman, I have requested two program supplementals in the 1982 budget for fiscal year 1981. They are: Acquisition of property as an addition to the grounds of the U.S. Supreme Court Building, $645,000, and $42,000 for an additional amount projected for fiscal year 1981 for the purchase of electrical energy from the Potomac Electric Power Co.

Both of these requests have been included in the 1982 budget, as transmitted, and are justified separately as fiscal year 1981 supplementals.

Mr. Chairman, that concludes the summary and I shall be pleased to respond to questions.

LAND ACQUISITION

Senator WEICKER. In addition to a $60,000 supplemental for pay and a $42,000 supplemental for increased utility costs, there is a request for $645,000 for land acquisition. I understand that this property, located near the Supreme Court Building, is currently leased by the Court as a parking lot. What has prompted the decision to purchase rather than continue the lease?

Mr. WHITE. The decision was prompted by the fact that the owner made known his intention to sell the property for development of housing in that area, and the Court became concerned because the property has been used as a parking lot for about 20 years. It hasn't been under lease quite that long.

Of course, the cost of the land keeps going up and its value keeps going up, as far as the owner is concerned; the owner is the Marlow Coal Co. They have no sentimental attachment to it from their standpoint. It is a piece of property they want to develop presumably to get some money out of it.

It would be, from the Court's standpoint, a very detrimental circumstance if they were not able to continue to park on that property.

Senator WEICKER. What is the cost of the acquisition itself?

Mr. WHITE. The cost of the acquisition is approximately 10 percent less than that $645,000. We arbitrarily added 10 percent to the appraisal for acquisition costs that might occur. We probably would have to get an updated appraisal for purposes of acquisition, and there might be a survey necessary and so on. So that 10 percent was just an arbitrary addition.

Senator WEICKER. What improvements are planned and how much is budgeted?

Mr. WHITE. The $60,000 which, as I mentioned, is approximately 10 percent of the appraised value, includes landscaping costs and contingencies and things of that nature. We are not planning any major improvement to the property at this point. It is useful as a parking lot just as it is.

Senator HOLLINGS. On that point of landscaping, I am informed all of the land is not being used and when you landscape you could increase the size of the parking lot. Is that correct or not?

Mr. WHITE. I don't think that is true. I think we are using all of it that is capable of being used for parking at the moment. I may be wrong about that. That is my understanding of it.

The Marshal of the Court is here. Perhaps he could respond to that.

Senator HOLLINGS. It is all being used?

Mr. WONG. Yes; it is all being used, although there is always that possibility that with landscaping we may get one or two more spaces.

Senator HOLLINGS. I was talking of something substantial.

Senator INOUYE. How many square feet do you have?

Mr. WHITE. The parking lot contains approximately 15,000 square feet. It amounts to roughly $38.75 per square foot. The appraisal price of the property was $585,000. I mentioned I added $60,000.

Senator WEICKER. Is parking available to visitors or to counsel or is it strictly used for employees of the Supreme Court?

Mr. WHITE. Marshal Wong could best answer that question.

The question was, are visitors and counsel permitted to use the lot?

Mr. WONG. We try to use the building garage for visitors, although it is limited.

PREVENTIVE MAINTENANCE PROGRAM

Senator WEICKER. One last question. I see you are requesting a new item an annual recurring maintenance program for the pointing and caulking of masonry joints of the Supreme Court Building. Am I correct that this request will be built into the base in the future?

Mr. WHITE. Yes; as a matter of fact, it is a request that we are making in all of our appropriations, the idea being to have a preventive maintenance program whereby we would have several masons going from one building to another pointing and caulking so as to prevent major problems from occurring.

As you may recall, we spent about $1.5 million on the Supreme Court Building several years ago because of a major problem with no maintenance having been done on it since it was built. We think that all of the buildings on the Hill should have this continuous program. This would be the Supreme Court's contribution, as it were, toward the whole program whereby we would have workmen on the Hill working on each building.

Senator WEICKER. Is that accomplished in-house?

Mr. WHITE. It would be in-house in the sense that we would have our own supervisory people. We would hire the masons on a day-labor basis, as we do with any construction job, as though we were a contractor, and move them from one building to another in accordance with the amount of work for that year.

Senator WEICKER. Senator Hollings?

Senator HOLLINGS. I have no questions, other than to urge that you move forward on that parking lot. You have a 6-month's option, or what do you have?

Mr. WHITE. We really do not have an option. We have the sufferance of the owner waiting for this process to take place. We have a lease which expired last September and which is now on a month-to-month basis. The owner is cooperative and waiting.

Senator HOLLINGS. Don't discourage him. We will buy it. You had a crowd up there that lost the building over at 400 North Capitol. We could have bought it for $31 million. The present buyer was offered $97 million last July. And who is in it? We are. We are paying those payments, the Senate, with all of its computers, as well as Amtrak, which is mostly Government funded. And they have 900 parking spaces over there.

Senator WEICKER. Why wasn't this included in the bill last year, or was it?

Mr. WHITE. The parking lot?

Senator WEICKER. Yes.

Mr. WHITE. We had to get authorization first. I think that the subject came to a head during this past year. It was authorized in the last Congress, but it was authorized late in the session, I believe December 15.

Senator WEICKER. Any further questions?

Thank you very much.

Mr. WHITE. Thank you very much.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

STATEMENT OF CHARLES CLARK, U.S. CIRCUIT JUDGE, U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

ACCOMPANIED BY:

ROBERT E. MAXWELL, CHIEF JUDGE, U.S. DISTRICT COURT, NORTHERN DISTRICT OF WEST VIRGINIA

WILLIAM E. FOLEY, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

RALPH KELLEY, BANKRUPTCY JUDGE, EASTERN DISTRICT OF TENNESSEE

BUDGET REQUEST

Senator WEICKER. Our next request is that of the Courts of Appeals, District Courts, and other judicial services. The amount requested is $685,920,000, an increase of $40,252,000 over the 1982 base, and provides for 14,108 permanent positions, an increase of 1,104 over 1981.

The request includes $35,488,000 as adjustments to base, a net figure that reflects increased cost of health benefits, travel expenses, telecommunications, postage, libraries, contract rates, supplies and services, transfer of some COURTRAN systems costs from the Federal Judicial Center, additional jury fees, replacement and rehabilitation of furniture and furnishings, space rental, and overtime protective service, as well as a reduction of $3,758,000 in nonrecurring expenses.

Appearing on behalf of this request is Judge Charles Clark, U.S. Court of Appeals for the Fifth Circuit, who is accompanied by Chief Judge Robert E. Maxwell, U.S. District Court, Northern District of West Virginia; and Mr. William E. Foley, Director, Administrative Office of the U.S. Courts. In addition, we have Judge Kelley who is representing the Bankruptcy Courts.

PREPARED STATEMENTS

The Court of International Trade, the Court of Claims, and the Court of Customs and Patent Appeals have submitted statements which will be included in the record of today's hearing.

[The statements follow:]

STATEMENT OF EDWARD D. RE

As in the past, it is a pleasure to appear before you. Today, I appear on behalf of the "newest" court in the federal judicial system, the United States Court of International Trade. The new court results from developments brought about by the Trade Agreements Act of 1979 and, more specifically, the enactment of the Customs Courts Act of 1980.

The scope and dimensions of the changes enacted by the Congress are so extensive that they cannot accurately be described from a "before and after" perspective. Indeed, all indications suggest that the full implications cannot, and will not be known for several years. We do know that Congress has presented the court with a new charter intended to equip the federal judicial system to deal effectively and efficiently with the increasingly complex problems arising from international trade litigation.

These increased responsibilities are described and explained in the reports, accompanying the Customs Courts Act of 1980, of the House and Senate Judiciary Committees, Report Number 96-1235 and Report Number 96-466. Of course, I will answer any questions you may have which pertain to this legislation.

The Act, which became effective November 1, 1980, enhances the importance and effectiveness of the new United States Court of International Trade by clarifying and expanding the status, jurisdiction and powers of the former United States Customs Court. The name of the court was changed to the United States Court of International Trade more accurately to describe the court's expanded jurisdiction and increased judicial responsibilities relating to international trade.

Since the Act was necessary to implement the Trade Agreements Act of 1979, which took effect on January 1, 1980, its expedited passage was of great importance. Consequently, it passed both Houses of Congress by unanimous consent in the latter part of September 1980, and became effective only three weeks after its enactment date.

The compelling urgency for the Act was created by the fact that the principal statutes governing the United States Customs Court were not in step with the increasing complexities of international trade litigation, and there has been a significant increase in the number of suits challenging government actions in the international trade area. Many of these suits were instituted in the district courts because it was difficult to determine in advance of suit whether subject matter jurisdiction was with the Customs Court or the district courts. In addition, because of the limited remedial powers of the Customs Court, litigants would attempt to find jurisdiction in a district court where they hoped to achieve appropriate equitable or legal relief for their alleged injuries.

The statutes pertaining to the jurisdiction of the Customs Court specifically limited the subject matter jurisdiction of the court, the class of persons with standing to institute actions, and the forms of relief available before the court. Consequently, when a dispute arose which was not clearly assigned by law to the Customs Court, or when an aggrieved person had no standing in the court, or when the remedy sought was not available from the court, the district courts were asked to take jurisdiction under one of their general or specific jurisdictional statutes.

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These cases, and the resulting inconsistent court decisions, created a great deal of confusion and uncertainty, and threatened the constitutional mandate requiring uniformity in decisions relating to importations. The recent increase in the number and complexity of international trade litigation compounded the problems.

The "cure" for these problems, as reflected in the Act, was essentially twofold. The Act assigns original and exclusive subject matter jurisdiction over civil actions arising out of importations and international trade statutes to one court, the Court of International Trade. Secondly, the Act grants to the court all of the powers in law and equity of, or as conferred by statute upon, a district court. The Act makes it clear to those who suffer injury in this area, that they may seek redress in a national court and be heard upon the merits; and, if they are successful, the court is able to grant them the appropriate relief necessary.

For purposes of budgetary planning and control in future years, our specific future funding requirements and allocations are presently unknown and uncertain. We cannot study and analyze currently available data to forecast potential operations and expenditures, because of the significant changes in the kind and variety of judicial responsibilities for which the court is now responsible. However, in planning and presenting our appropriation request for 1982, we assumed your committee would not want us to submit, in support of our request, speculative and conjectural future needs; and, we have not done so. Instead, we have limited our requested net increase to mandatory salary and health benefit costs and inflationary factors.

In our continuing efforts to economize, we did not

include in our request funds for the publication of the "Customs Law Digest", thereby saving $41,000; and, we are at this time asking a further reduction of $20,000 from the amount which was included in our intitial request. The $20,000 savings will be realized by the abolishment of one permanent position, thereby reducing the total number of permanent positions from 104 to 103. With these reductions, I am pleased to report to you that the total amount requested for 1982, $5,340,000, is less than 1% above the amount appropriated for the current fiscal year, $5,300,000.

While we will remain within the overall amount requested without impairing the ability of the court to discharge its increased responsibilities, we expect that it may be necessary for us to revise slightly specific line item estimates as new developments take place, and more information becomes available. When such corrective action becomes apparent, we hope that we can count on the continued cooperation of this committee in permitting us to reallocate funds.

With the committee's support for our requests over the past years, we have been able to limit any increases since 1972 to mandated costs and amounts required to offset inflation. Although we cannot now be certain, we hope that we can continue that record beyond 1982.

STATEMENT OF DANIEL M. FRIEDMAN

The following statement is submitted in support of the request of the Court of Claims for appropriations for fiscal year 1982.

We are requesting a relatively modest increase of $167,000, or 2.8 percent of our current year's appropriation of $5,823,000, to $5,990,000. The major portion of this increase -- $128,000, or 76 percent -- represents inflationary increases in

the cost of goods and services or other items over which we have no control.

There are two other items -- one involving personnel and the other involving printing -- for which we are seeking additional funds.

1. We are requesting the addition of a library technician at grade JSP-5 at a cost of $14,000. Although we made a similar request last year, which the Committee did not grant, we are repeating the request because the conditions that prompted us to make it last year continue, and we believe that this additional position is important to the proper functioning of the library. The Court of Customs and Patent Appeals joins in this request.

The Court of Claims and the Court of Customs and Patent Appeals jointly operate a single library in the court building which serves both courts, as well as the Federal Judicial Center, the Administrative Office of the United States Courts, members of the bars of both courts, and government lawyers. The library is staffed by two professional librarians; the librarian is on the staff of the Court of Claims, and the assistant librarian is on the staff of the Court of Customs and Patent Appeals. The joint library has been operated since the present building housing both courts was occupied in 1967. In the 13 years of operation of the library, there have been substantial increases in the use of the library and the amount of material it contains. The number of people using the library has increased 185 percent. The number of books alone has increased 48 percent, and this does not include such items as congressional documents, government paperback materials, or looseleaf services. The increase in the use of the library and in the volume of different materials has imposed an ever-increasing burden on the professional librarians, who are required to perform the administrative and clerical duties necessary for the functioning of the library. The result has been that these two individuals do not have adequate time to do their professional work.

The library technician for whom funding is sought would

perform clerical, processing, and filing duties connected with the operation of the library. This would enable the professional librarians to spend their time upon their primary functions of providing professional services to users of the library, together with such duties as cataloging, selecting additions to the library, and working on bibliographical materials.

2. The other item is an increase in the cost of printing of $25,000. In the past, we have been able substantially to reduce our printing cost. A large part of these savings resulted when the Government Printing Office, instead of itself doing the printing and binding, negotiated a term contract for the work with a private firm. When the prior 2-year contract expired in January 1980, the GPO solicited bids for a new contract for the same term. The GPO received only one bid at $188,000 per year, which was almost double the previous contract price of $100,000 per year. The court did not participate in the negotiation of the new contract. When the court questioned the GPO about this substantial and unexpected increase in printing costs, that agency replied:

> Prior to making award, all available material and labor statistics were taken into consideration including the Government Printing Office Scale of Prices which compared favorably with the bid in question. Based on these facts, the award was made.

The court believes that the additional $25,000 it is requesting, together with anticipated savings in other accounts, will enable it to meet the higher printing costs it is now experiencing.

STATEMENT OF HOWARD THOMAS MARKEY

It is our pleasure to report on our stewardship and to outline the needs of the court for Fiscal Year 1982.

Respecting our stewardship, the primary measure is the interval between filing and disposition of cases. For many years prior to 1972, the interval was three years. Though our filings have remained steady, we are pleased to report continuing success in reducing that interval. Last year, our interval was 7.3 months in Patent and Trademark

cases and 8.7 months in International Trade cases. As we approach some irreducible minimum, annual reductions in the interval necessarily diminish, the reduction from last year, for example, being .5 months in Patent and Trademark cases and .1 months in International Trade cases. Nonetheless, the court continues to move in the right direction, and, most importantly, continuing improvement in the prompt administration of justice has not resulted in diminution of the quality of our decisions.

The oversight, understanding, and support of this Committee has been a major factor in the success of the court. As but one example, the Committee's approval of our request in August 1980 to reprogram funds for purchase of two word processing machines then rented, and to rent an additional machine for our new judge, enabled the court to move ahead without the normal delay occasioned by the budget cycle.

As the Committee will recall, the court cut back its budget filed in 1972 and requested an appropriation less than that provided in the prior year. It held its request for controllable funds at that reduced figure through 1977. Since then, inflation and acquisition of equipment has forced us to request increases in controllable costs.

The justification statement reflects mandatory increases of $15,000 in personnel costs and $18,000 in GSA's Standard Level User Charge. Among the object classifications subject to control of the court, a total increase of $16,000 is shown, based on application of an inflationary factor. On careful reconsideration of actual experience, and in light of the President's request that travel costs be limited, the court desires to reduce from $3000 to $1000 its request for object classification 22, and to delete from its request the $3000 increase reflected in object classification 21. Hence our requested increase in controllable funds, occasioned entirely by inflation, totals $11,000. Our total requested

increase, in mandatory and controllable costs, comes to $44,000 or approximately 2% of the 1981 estimated obligation.

The Court of Claims has requested the employment of a library technician for the jointly supported library of the two courts. We join in that request.

PREPARED STATEMENT

Senator WEICKER. Judge Clark, we are pleased to hear your statement in regard to the request.

Judge CLARK. Thank you, Mr. Chairman. I would suggest, for the convenience of the committee, since you have the statement in written form, that it be included in the record.

Senator WEICKER. It will be included in its entirety for the record at this point.

[The statement follows:]

STATEMENT OF JUDGE CHARLES CLARK

WE APPRECIATE THIS OPPORTUNITY TO APPEAR BEFORE YOU IN SUPPORT OF THE BUDGET ESTIMATES FOR THE OPERATION AND MAINTENANCE OF THE UNITED STATES COURTS OF APPEALS AND DISTRICT COURTS FOR FISCAL YEAR 1982.

THE HONORABLE ROBERT E. MAXWELL, CHIEF JUDGE OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF WEST VIRGINIA, ALONG WITH MR. WILLIAM E. FOLEY, DIRECTOR OF THE ADMINISTRATIVE OFFICE, AND MEMBERS OF HIS STAFF WILL ASSIST ME IN THE PRESENTATION. TOGETHER WE SHALL ENDEAVOR TO ANSWER ANY QUESTIONS YOU MAY HAVE OR PROVIDE YOU WITH ANY ADDITIONAL INFORMATION YOU MAY DESIRE.

THE TOTAL REQUESTED UNDER THE HEADING, "COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES," FOR FISCAL YEAR 1982 IS $685,920,000, AN INCREASE OF $75,740,000 OVER THE AMOUNT APPROPRIATED FOR 1981 AFTER TAKING INTO ACCOUNT THE PROPOSED SUPPLEMENTALS FOR PAY COSTS. MR. CHAIRMAN, MUCH OF THE INCREASE IN BUDGETARY REQUIREMENTS IS DUE TO RISING COSTS OF GOODS AND SERVICES, INCLUDING PRINTING, SUPPLIES, LAWBOOKS, TELEPHONE RATES, SPACE RENTAL CHARGES, AND FURNITURE AND FURNISHINGS. IF WE EXCLUDE THE COST OF THE SO-CALLED ADJUSTMENTS TO BASE AND BUILT-IN CHANGES, WHICH ARE OF AN UNCONTROLLABLE NATURE AND WHICH IN FISCAL YEAR 1982 ARE ESTIMATED AT $35,488,000, THE INCREASE IN OUR BUDGETARY REQUIREMENTS WOULD BE $40,252,000, OR APPROXIMATELY 6.6 PERCENT.

WE ARE REQUESTING 1,104 ADDITIONAL POSITIONS FOR THE COURTS OF APPEALS AND DISTRICT COURTS, OF WHICH 321 ARE ADDITIONAL "SUPPORTING PERSONNEL," 634 ARE NEW POSITIONS FOR THE BANKRUPTCY SYSTEM, AND 149 ARE NEW POSITIONS UNDER THE HEADING "SALARIES AND EXPENSES OF MAGISTRATES." THIS REPRESENTS AN INCREASE OF 9 PERCENT IN TOTAL PERSONNEL REQUIREMENTS OVER THE NUMBER IN OUR 1981 BUDGET.

Caseload

I have attached a statement which shows the comparative workload for the courts of appeals and district courts for fiscal years 1980 and 1975. You will note from that table that filings in the courts of appeals have increased 39.2 percent in five years. Despite an increase in terminations, the pending caseload reached another record high of 21,027. The additional 35 judgeships provided by the Judgeship Act of 1978 had a significant effect on the rate of disposition. The number of terminations in fiscal year 1980 increased by 17.3 percent over the number of terminations in 1979. However, even with this significant increase in terminations, it has not kept pace with the growth in new filings. We have concluded that the judges in the courts of appeals will continue to carry a very heavy caseload because of the increase in the volume of appeals generated by the activities of the new district judges.

With regard to the district courts, the declining trend in criminal filings has continued since 1975. Criminal filings have come down from 43,282 in 1975 to 29,387 in 1980, a reduction of 32 percent. Whether this trend continues in the future depends largely upon the policy and direction the new Administration takes in the area of criminal justice. As far as workload for the courts is concerned, the decline in criminal cases has been more than offset by the rapid rise in civil filings which are up 45.8 percent over the same period. This upward trend is expected to continue. Notwithstanding a substantial increase in civil terminations, the pending civil caseload grew by 59 percent to a record high of 190,448.

As of December 31, 1980, 34 of the 35 judgeships for the courts of appeals and 108 of the 117 judgeships for the district courts authorized by the Judgeship Act of 1978 had been filled.

BANKRUPTCY FILINGS IN 1980 REACHED AN ALL TIME RECORD HIGH OF 421,426. THIS REPRESENTS AN INCREASE OF 66 PERCENT OVER THE PREVIOUS RECORD LEVEL OF 254,484 FILINGS IN 1975.

SALARIES OF JUDGES

MR. CHAIRMAN, THIS APPROPRIATION, AS YOU KNOW, IS UNCONTROLLABLE AND WE MUST NECESSARILY CALCULATE OUR REQUIREMENTS BASED ON ANTICIPATED VACANCIES AND THE NUMBER OF JUDGES THAT WILL TAKE SENIOR STATUS. IT IS CONTEMPLATED THAT IN FISCAL YEAR 1982 THERE WILL BE, ON THE AVERAGE, 30 JUDGESHIP VACANCIES. IN ADDITION, PROVISION HAS BEEN MADE FOR AN ESTIMATED NET INCREASE OF TEN JUDGES WHO WILL TAKE SENIOR STATUS IN FISCAL YEAR 1982. BY 1982, 94 JUDGES WILL BE ELIGIBLE TO TAKE SENIOR STATUS.

ON DECEMBER 5, 1980, THE PRESIDENT SIGNED PUBLIC LAW 96-504 WHICH, AMONG OTHER THINGS, PROVIDES FOR THE PAYMENT OF ANNUITIES FROM THE JUDICIAL SURVIVORS' ANNUITIES FUND TO WIDOWS OF JUSTICES OF THE SUPREME COURT WHO NEVER HAD THE OPPORTUNITY TO PARTICIPATE IN THE CONTRIBUTORY JUDICIAL SURVIVORS' ANNUITY PROGRAM. PRIOR TO THE PASSAGE OF THIS ACT, THESE WIDOWS WERE PAID ANNUITIES AT THE RATE OF $10,000 PER YEAR OUT OF THE APPROPRIATION "SALARIES OF JUDGES." THE ACT ALSO AUTHORIZES NECESSARY FUNDS TO BE APPROPRIATED TO MAINTAIN THE FUND ON AN ACTUARIALLY SOUND BASIS.

WITH THE PERMISSION OF THE COMMITTEE, I WOULD LIKE TO HAVE INSERTED INTO THE RECORD A COPY OF OUR LETTER TO THE OFFICE OF MANAGEMENT AND BUDGET REQUESTING THE TRANSMISSION TO CONGRESS OF A SUPPLEMENTAL APPROPRIATION FOR THE JUDICIARY FOR FISCAL YEAR 1981. THE SUPPLEMENTAL REQUEST IS IN THE AMOUNT OF $616,000 AND, WHEN APPROPRIATED, WILL BE DEPOSITED INTO THE JUDICIAL SURVIVORS' ANNUITIES FUND. A COPY OF THE JUSTIFICATION MATERIAL IN SUPPORT OF THIS SUPPLEMENTAL REQUEST HAS BEEN PROVIDED TO YOUR COMMITTEE.

AT THIS TIME, I WOULD ALSO LIKE TO SUBMIT A LANGUAGE CHANGE FOR THE RECORD DELETING THE REFERENCE TO THE PAYMENT OF WIDOWS

AND REDUCE OUR BUDGET REQUEST BY $50,000 WHICH IS THE AMOUNT CONTAINED IN THE BUDGET BASE FOR THIS PAYMENT.

Salaries of Supporting Personnel

We have requested an increase of 321 supporting personnel for the courts of appeals and district courts. A summary of the additional positions is contained on page 7.3 of our budget justifications.

The budget includes 9 positions for the division of the Fifth Judicial Circuit and 9 additional positions for the reorganization of the United States Court of Appeals for the Ninth Circuit. The Fifth Circuit Court of Appeals Reorganization Act of 1980, Public Law 96-452, was approved on October 14, 1980, and divides the present Fifth Judicial Circuit into two separate circuits, effective October 1, 1981. The Fifth Circuit Court of Appeals will be composed of the judicial districts within the states of Louisiana, Mississippi and Texas. The new Eleventh Circuit will include the states of Alabama, Florida and Georgia.

In 1982, the second phase of the reorganization of the Ninth Circuit Court of Appeals will begin. During Phase I, three administrative units were created. Seattle, San Francisco, and Los Angeles/Pasadena are the administrative centers for the northern, middle, and southern units, respectively. Decentralization will be completed during Phase II. All documents in the northern and southern regions will be filed and maintained in these branches of the clerk's office.

Mr. Chairman, as I pointed out earlier in my statement, we are continuing to experience significant increases in the number of filings in both the United States courts of appeals and the United States district courts. In order to handle the increasing workload of those courts, 185 additional deputy clerks are being requested. This is based on the current staffing formula approved by the Judicial Conference of 75 to 1 in the courts of appeals and 100 to 1 in the district courts.

As a result of your Committee's request, the Administrative Office commenced a study to determine the need to continue the central staffs in the courts of appeals. At this time last year, we reported that we had only preliminary results of the study, and subsequently we did provide the Committee with copies of the report which concluded that there was a need to continue the central legal staff function. The finding was concurred in by the chief judges of the circuits. The Judicial Conference has affirmed the importance of a central staff, and, based on projected increased workload for fiscal year 1982, has approved the request for 16 additional positions for the staffs of the circuit courts.

Last year, your Committee continued to support the improvement of the National Court Library System with the approval of 25 additional library positions. Included in our budget request are 36 positions to continue to expand the satellite library concept providing a center for legal research and services. These libraries have begun to eliminate the costly duplication of lawbook purchases and continuation material. In 1982, we anticipate a real saving of $300,000 in the amount of money required for continuation material as a direct result of implementation of the National Court Library System. The positions requested will be used to increase the services at current locations and for the establishment of 16 additional satellite libraries.

I would also like to point out that we have included $1,304,000 to modify the Judicial Salary Plan to recognize the change in the role of our journeyman probation officers and our deputy clerks in charge of financial operations and jury administration. The Judicial Salary Plan covering these positions has not changed since the early 1960s. We plan to elevate 25 percent of our current journeyman probation officers from JSP-12 to 13. This is in recognition of the changing demand and specialization required. The positions now require specialization in the means of treating

DRUG AND ALCOHOL DEPENDENT OFFENDERS AND IN SOCIAL COUNSELING WITH EMPHASIS ON BEHAVIOR MODIFICATION. THE FINANCIAL DEPUTY POSITIONS HAVE EVOLVED OVER THE YEARS WITH THE ADMINISTRATIVE OFFICE DELEGATING MORE AND MORE HIGH LEVEL FUNCTIONS TO THE COURTS, SUCH AS CONTROL OVER FUNDS DEPOSITED WITH THE COURTS AND DISBURSING FUNCTIONS. THE POSITION OF DEPUTY CLERK, JUROR ADMINISTRATION, HAS ALSO BECOME MORE COMPLEX WITH CHANGES RESULTING FROM AMENDMENTS TO THE JURY SELECTION AND SERVICE ACT, WHICH EXPANDED THE JURY MANAGEMENT FUNCTION BECAUSE OF THE INCREASED JURY UTILIZATION DUE TO NEW REQUIREMENTS OF BANKRUPTCY COURTS AND MAGISTRATES. AN INCREASE IN GRADE WILL BE ALLOWED IN THOSE COURTS WHERE THE JURY CLERK HAS ASSUMED ALL ASPECTS OF MANAGEMENT OF THE JURY SYSTEM.

DEFENDER SERVICES

WE ARE REQUESTING AN INCREASE IN THIS APPROPRIATION FOR FISCAL YEAR 1982 IN THE AMOUNT OF $3,320,000. THE MAJOR PORTION OF THE INCREASE IS ASSOCIATED WITH THE IMPACT OF INFLATION ON THE PROGRAM. AS YOU KNOW, THE DEFENDER SERVICES APPROPRIATION IS SUBJECT TO LITTLE, IF ANY, CONTROL SINCE OUR BUDGETARY REQUIREMENTS ARE GEARED TO THE NUMBER OF PERSONS REQUIRING REPRESENTATION BY COURT-APPOINTED COUNSEL OR BY DEFENDER ORGANIZATIONS. THIS IS A "NO-YEAR" APPROPRIATION AND IF THERE IS ANY BALANCE AT THE END OF THE FISCAL YEAR, IT WILL BE CARRIED FORWARD AND WILL BE AVAILABLE IN THE SUCCEEDING YEAR.

FEES OF JURORS AND COMMISSIONERS

THE INCREASE IN OUR BUDGETARY REQUIREMENTS IS DUE PRIMARILY TO THE ANTICIPATED INCREASED USE OF GRAND AND PETIT JURORS AND TO INFLATIONARY FACTORS INCREASING THE COST OF SUBSISTENCE AND MILEAGE ALLOWANCES, PARKING, AND MEALS AND LODGING FURNISHED SEQUESTERED JURORS. AS IN THE DEFENDER SERVICES APPROPRIATION, THIS ACCOUNT IS SUBJECT TO LITTLE CONTROL SINCE OUR BUDGET IS GEARED TO THE NUMBER OF PERSONS REQUIRING JURY TRIALS AND THE

NUMBER OF GRAND JURIES EMPANELED AT THE REQUEST OF UNITED STATES ATTORNEYS.

TRAVEL AND MISCELLANEOUS EXPENSES

EXCLUDING THE ADJUSTMENTS TO THE BASE APPROPRIATION FOR SO-CALLED BUILT-IN CHANGES, WE ARE REQUESTING AN INCREASE OF $2,643,000, OF WHICH $963,000 ARE FOR EXPENSES RELATING TO THE REQUEST FOR NEW PERSONNEL UNDER THE HEADING "SALARIES OF SUPPORTING PERSONNEL," $680,000 ARE FOR EXISTING PROGRAMS AND ACTIVITIES, AND $1,000,000 ARE TO EMBARK ON A MULTI-YEAR PROGRAM FOR THE INCREASED USE OF WORD PROCESSING EQUIPMENT IN THE COURTS WHERE IT CAN BE JUSTIFIED ON A COST/BENEFIT BASIS. THE BENEFITS TO BE DERIVED FROM THE APPLICATION OF THIS EQUIPMENT IN THE COURT ENVIRONMENT WERE PROVEN IN AN INTENSIVE PILOT PROJECT CONDUCTED BY THE FEDERAL JUDICIAL CENTER OVER A TWO YEAR PERIOD IN THE UNITED STATES COURT OF APPEALS IN THE THIRD CIRCUIT.

LAST YEAR, WE REPORTED TO THIS COMMITTEE THAT THE STUDY ON THE INCREASE IN THE COSTS OF PRINTING OF OPINIONS FOR THE UNITED STATES COURTS OF APPEALS, WHICH WAS PERFORMED AT YOUR DIRECTION, WAS COMPLETED, AND THAT THE RECOMMENDATIONS WOULD BE CONSIDERED AT THE NEXT MEETING OF CHIEF JUDGES OF THE UNITED STATES COURTS OF APPEALS. THE CHIEF JUDGES REVIEWED ALL OF THE COST SAVINGS DEVICES CONTAINED IN THE STUDY AND CONCLUDED THAT THE HIGH DEGREE OF STANDARDIZATION REQUIRED AMONG THE VARIOUS CIRCUIT COURTS TO EFFECT MINIMAL SAVING COULD NOT BE JUSTIFIED.

SALARIES AND EXPENSES OF MAGISTRATES

IN FISCAL YEAR 1982, WE ARE REQUESTING AN INCREASE OF $5,555,000 AND 149 ADDITIONAL POSITIONS.

PROVISION HAS BEEN MADE FOR 6 NEW FULL-TIME MAGISTRATES AND 18 SUPPORTING PERSONNEL. THESE ADDITIONAL POSITIONS WERE AUTHORIZED BY THE JUDICIAL CONFERENCE IN SEPTEMBER 1980. THE WORKLOAD OF UNITED STATES MAGISTRATES HAS BEEN SHIFTING STEADILY TOWARDS THE IMPORTANT AND TIME-CONSUMING "ADDITIONAL DUTIES" AUTHORIZED

UNDER 28 U.S.C. 636(B). THE VOLUME OF "ADDITIONAL DUTY" PROCEEDINGS DISPOSED OF BY MAGISTRATES HAS INCREASED 184 PERCENT SINCE 1972. THESE DUTIES ARE OUTLINED IN DETAIL ON PAGE 11.6 OF THE JUSTIFICATIONS. THE FEDERAL MAGISTRATES ACT OF 1979 AUTHORIZED THE JUDICIAL CONFERENCE TO PROVIDE LEGAL ASSISTANT POSITIONS FOR FULL-TIME MAGISTRATES. BY PASSAGE OF THIS LAW, CONGRESS RECOGNIZED THE NEED FOR THESE POSITIONS AS THE RANGE AND VOLUME OF DUTIES ASSIGNED TO MAGISTRATES INCREASED, ESPECIALLY IN THOSE AREAS THAT REQUIRE LEGAL RESEARCH AND OPINION WRITING. MOREOVER, MAGISTRATES HAVE BEEN AUTHORIZED TO TRY CIVIL CASES, INCLUDING JURY TRIALS WITH THE CONSENT OF THE PARTIES. SINCE MORE THAN ONE-HALF OF THE FULL-TIME MAGISTRATES ARE PERFORMING A FULL RANGE AND APPRECIABLE VOLUME OF JUDICIAL DUTIES, THE JUDICIAL CONFERENCE HAS AUTHORIZED REQUESTING 125 LEGAL ASSISTANT POSITIONS.

BANKRUPTCY COURTS, SALARIES AND EXPENSES

MR. CHAIRMAN, THE HONORABLE RALPH H. KELLEY, BANKRUPTCY JUDGE FOR THE EASTERN DISTRICT OF TENNESSEE, AND A MEMBER OF OUR BUDGET COMMITTEE, WILL ASSIST IN JUSTIFYING THE BUDGET REQUEST FOR THE BANKRUPTCY COURTS.

IN TOTAL, WE HAVE REQUESTED 634 NEW PERMANENT POSITIONS FOR THE BANKRUPTCY COURTS IN FISCAL YEAR 1982. THIS ACTUALLY REPRESENTS A NET INCREASE OF 514 POSITIONS, TAKING INTO ACCOUNT THE 120 TEMPORARY EMPLOYEES AUTHORIZED IN FISCAL YEAR 1981. THIS LARGE NUMBER OF ADDITIONAL DEPUTY CLERKS IS NECESSARY IF THE BANKRUPTCY COURT IS TO KEEP UP WITH THE WORKLOAD CREATED BY THE TREMENDOUS INCREASE IN FILINGS. AS I STATED EARLIER, FISCAL 1980 RECORDED THE HIGHEST LEVEL OF BANKRUPTCIES IN HISTORY. BANKRUPTCY FILINGS REACHED 421,427, UP AN ASTRONOMICAL 180,773 CASE FILINGS OVER FISCAL YEAR 1979, AND IT APPEARS THAT WE STILL HAVE NOT REACHED A LEVELING OFF POINT.

WE ARE IN THE PROCESS OF FINALIZING WORK ON A NEW STAFFING FORMULA DEVELOPED FROM A WORK MEASUREMENT STUDY. THE FORMULA

WILL BE PRESENTED TO THE JUDICIAL CONFERENCE IN MARCH OF THIS YEAR.

THE PRELIMINARY FINDINGS, BASED ON AN ESTIMATED 475,000 CASE FILINGS, INDICATE A NEED FOR 659 ADDITIONAL POSITIONS. THIS IS 319 POSITIONS LESS THAN WOULD BE REQUIRED UNDER THE OLD FORMULA OF ONE CLERICAL EMPLOYEE FOR EACH 120 BUSINESS BANKRUPTCY PETITIONS FILED AND ONE EMPLOYEE FOR EACH 240 NON-BUSINESS BANKRUPTCIES. THE 659 POSITIONS JUSTIFIED ON THE BASIS OF THE NEW FORMULA ARE 25 MORE THAN WE HAVE REQUESTED. HOWEVER, WE FEEL THAT THIS SHORTFALL CAN BE ACCOMMODATED THROUGH THE APPOINTMENT OF TEMPORARY POSITIONS WHERE THE WORKLOAD WARRANTS.

SPACE AND FACILITIES

THE BUDGET ESTIMATE FOR 1982 IS $135,280,000, WHICH REPRESENTS AN INCREASE OF $15,280,000 OVER THE AMOUNT APPROPRIATED FOR 1981. OF THIS AMOUNT, $5,033,000 IS REQUIRED TO MAINTAIN OUR OPERATIONS AT THEIR CURRENTLY APPROVED LEVELS.

THE SUM OF $5,989,000 IS RELATED TO THE NEW POSITIONS REQUESTED FOR THE OPERATION OF THE COURTS OF APPEALS, DISTRICT AND BANKRUPTCY COURTS. THE REMAINING $4,258,000 IS REQUIRED FOR RENT REQUIRED INCIDENT TO THE OCCUPANCY OF NEW BUILDINGS AND NEWLY CONSTRUCTED AND REMODELED FACILITIES AND TO FURNISH AN ADDITIONAL 16 SATELLITE LIBRARIES.

MR. CHAIRMAN, I WOULD LIKE TO POINT OUT THAT WE HAVE FELT FOR SOME TIME THAT THE STANDARD LEVEL USER CHARGES (SLUC) OF THE GENERAL SERVICES ADMINISTRATION ARE EXCESSIVE. WE HAVE ASKED THAT A SURVEY BE CONDUCTED TO IDENTIFY THOSE LOCATIONS WHERE THE SLUC RATES APPEAR TO BE SUBSTANTIALLY HIGHER THAN THE RATES BEING CHARGED COMMERCIAL TENANTS IN SIMILAR SPACE. WE HOPE TO HAVE THE RESULTS OF THAT SURVEY AVAILABLE TO RENEGOTIATE THE CHARGES IMPOSED BY THE GENERAL SERVICES ADMINISTRATION AND, HOPEFULLY, SHOW A REDUCTION IN THIS BUDGET LINE ITEM NEXT YEAR.

WHILE WE ARE ON THE SUBJECT OF SPACE, WE REPORTED LAST YEAR THAT A COMPREHENSIVE SURVEY WAS GOING TO BE MADE ON THE UTILIZATION OF ALL COURT FACILITIES. THE SURVEY IS NOW COMPLETE AND THE TENTATIVE CLOSURE RECOMMENDATION MADE BY THE ADMINISTRATIVE OFFICE HAS BEEN REVIEWED BY EACH COURT WHERE A FACILITY WAS RECOMMENDED FOR CLOSING. WE HAVE ALSO RECEIVED THE RECOMMENDATIONS OF THE JUDICIAL COUNCILS, THE LOCAL GOVERNMENT, BAR ASSOCIATIONS AND INDIVIDUAL ATTORNEYS. THIS INFORMATION WILL BE PROVIDED TO THE JUDICIAL CONFERENCE AT ITS MEETING IN MARCH FOR FINAL DECISIONS.

REGARDING COURT SECURITY, WE CONTINUE TO BE QUITE CONCERNED OVER THE FACT THAT THE JUSTICE DEPARTMENT BUDGET DID NOT INCLUDE ANY ADDITIONAL POSITIONS FOR THIS PROGRAM. IN FACT, WE HAVE LEARNED THAT THE EXECUTIVE BRANCH HAS NOT REQUESTED A SUPPLEMENTAL APPROPRIATION TO REINSTATE THOSE POSITIONS NOT ALLOWED IN 1981 BY CONGRESS. CONGRESS DIRECTED THAT A SUPPLEMENTAL BE REQUESTED SINCE THE LEGISLATION THAT WOULD HAVE ENDED THE PRACTICE OF THE MARSHALS SERVICE SERVING CIVIL PROCESS IN CASES IN WHICH THE GOVERNMENT IS NOT A PARTY DID NOT PASS. THIS ACTION, THOUGH NOT DIRECTLY RELATED TO COURT SECURITY, DOES HAVE AN IMPACT ON THE PROGRAM. THIS ERODES THE BASE NUMBER OF MARSHALS THAT CAN BE DRAWN UPON IN EMERGENCY SITUATIONS RELATED TO COURT SECURITY.

THE MARSHALS SERVICE AGREES THAT IT CANNOT PROVIDE THE LEVEL OF SECURITY NECESSARY WITH ITS CURRENT DOLLARS AND POSITIONS. IN THE PAST, THE MARSHALS SERVICE HAS PROPOSED A WIDE RANGE OF ADDITIONAL POSITIONS IF IT IS TO PERFORM THE SECURITY FUNCTION FOR THE COURTS.

SINCE THE JUDICIAL BRANCH IS NOT AN EXPERT IN THE AREA OF SECURITY, IT IS VERY DIFFICULT TO DOCUMENT THOSE AREAS WHERE WE MAY BE VULNERABLE AND DETERMINE WHAT WOULD BE REQUIRED IN TERMS OF PEOPLE AND FUNDS TO PROVIDE ADEQUATE SECURITY. WE ARE RECOMMENDING TO THE JUDICIAL CONFERENCE THAT THE ADMINISTRATIVE OFFICE SEEK THE ASSISTANCE OF EXPERTS IN THIS FIELD TO DOCUMENT WHAT OUR

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SECURITY NEEDS ARE ON A LOCATION BY LOCATION BASIS. ONCE THIS IS COMPLETED, WE WILL EXAMINE ALL ALTERNATIVES IN SEEING THAT ADEQUATE RESOURCES ARE PROVIDED FOR THIS VERY IMPORTANT PROGRAM.

SERVICES FOR DRUG DEPENDENT OFFENDERS

PUBLIC LAW 95-537 AUTHORIZED TO BE APPROPRIATED THE SUM OF $3,570,000 TO PROVIDE SERVICES AND SPECIAL SUPERVISION TO DRUG DEPENDENT OFFENDERS. WE ARE REQUESTING THE FULL AMOUNT OF THE AUTHORIZATION IN FISCAL YEAR 1982. OUR CURRENT ESTIMATE OF PROGRAM COSTS BASED ON THE PROJECTED NUMBER OF PERSONS REQUIRING SERVICES EXCEEDS THE AMOUNT AUTHORIZED. IN ORDER TO KEEP EXPENDITURES WITHIN THE AMOUNT AVAILABLE, THE PROBATION SYSTEM MAY HAVE TO REDUCE THE LEVEL OF SERVICES PROVIDED OR ARBITRARILY LIMIT THE ACCEPTANCE OF NEW CASES.

MR. CHAIRMAN, OUR BUDGET ESTIMATES FOR FISCAL YEAR 1982 ESSENTIALLY PROVIDE FOR INFLATION AND AN INCREASE RELATED TO GROWTH IN WORKLOAD. OUR REQUESTS FOR FISCAL YEAR 1982 ARE, WE BELIEVE, CONSERVATIVE AND IN KEEPING WITH THE DESIRE OF THE CONGRESS TO KEEP FEDERAL EXPENDITURES TO A MINIMUM. IN CONCLUSION, YOUR COMMITTEE HAS ALWAYS BEEN CONSIDERATE AND RESPONSIVE TO OUR NEEDS. WE ARE MOST GRATEFUL. WE LOOK FORWARD TO WORKING WITH YOU IN YOUR CONSIDERATION OF OUR REQUESTS FOR 1982.

COMPARATIVE WORKLOAD DATA FOR
COURTS OF APPEALS AND DISTRICT COURTS
FISCAL YEARS 1975 & 1980

	F.Y. 1975	F.Y. 1980 [1]	% Change
Courts of Appeals:			
Filings	16,658*	23,181	+39.2%
Terminations	16,000*	21,932	+37.1%
Pending, End of Year	12,128*	21,027	+73.4%
District Courts:			
Civil Cases			
Filed	117,320*	171,074	+45.8%
Terminated	104,783*	163,869	+56.4%
Pending, End of Year	119,767*	190,448	+59.0%
Criminal Cases			
Filed	43,282*	29,387	-32.1%
Terminated	43,515*	28,606	-34.3%
Pending, End of Year	22,411*	15,211	-32.1%
Criminal Defendants			
Filed	58,529*	39,914	-31.8%
Terminated	58,911*	38,538	-34.6%
Pending, End of Year	31,872*	21,862	-31.4%
Civil Trials:			
Jury	3,700*	3,937*	+ 6.4%
Non-Jury	7,903*	9,254*	+17.1%
Criminal Trials:			
Jury	4,907*	3,418*	-30.3%
Non-Jury	2,726*	3,216*	+18.0%
Bankruptcy Cases:			
Filed	254,484*	421,426	+65.6%
Terminated	192,792*	204,817	+ 6.2%
Pending, End of Year	262,283*	493,095	+88.0%
Petitions for Naturalization	124,308*	150,646*	+21.2%
Aliens Naturalized	115,494*	133,721*	+15.8%
Probation:			
Persons Received for Supervision	36,061*	30,870	-14.4%
Persons Under Supervision, End of Year	64,261*	63,361	- 1.4%
Presentence Investigations	31,740*	23,702	-25.3%
Other Investigations	60,123*	89,277	+48.5%
Magistrates:			
Trial Jurisdiction (Minor Offenses)	84,505*	90,402*	+ 7.0%
Preliminary Criminal Proceedings	103,326*	65,597*	-36.5%
Other Criminal and Civil Matters [2]	67,230*	127,218*	+89.2%

[1] Year ended September 30 unless otherwise indicated.
[2] Includes post-indictment arraignments, pretrial conferences in civil and criminal cases, prisoner petitions, motions, and various other duties.
*Data for the year ended June 30.

ANNUITIES PAID TO WIDOWS

Judge CLARK. There is also an additional item with regard to Supreme Court Justices' widows receiving annuities which we would like to supply for the record. The item is discussed in our statement.

[The information follows:]

LETTER FROM WILLIAM E. FOLEY

FEBRUARY 2, 1981.

Hon. DAVID A. STOCKMAN,
Director, Office of Management and Budget, New Executive Office Building, 17th and Pennsylvania Ave., NW., Washington, D.C.

DEAR MR. STOCKMAN: Pursuant to Public Law 96-504, approved December 5, 1980, which provides that surviving spouses of Supreme Court Justices receive annuities from the judicial survivors' annuity program, I submit for your consideration and transmittal to Congress a request for a supplemental appropriation for the judiciary for fiscal year 1981 and a language change for the appropriation "salaries of Judges."

Five Supreme Court Justice widows presently receive annuities under 28 U.S.C. 375, paid from the appropriation "salaries of Judges." These Justices predeceased the enactment of the provision making Supreme Court Justices eligible for participation in the judicial survivors' annuity program, 28 U.S.C. 376, which began in 1972. Under Public Law 96-504, section 375 is repealed and the five widows will receive annuities under the provisions of section 376 at the rate of $20,000 per year (they had been receiving annuities of $10,000 per year). The supplemental request in the amount of $616,000 is required to be deposited in the judicial survivors' annuities fund to maintain the fund as actuarially sound. The language change for the appropriation "salaries of Judges" deletes the provision for payment of the annuities authorized by 28 U.S.C. 375.

With kind regards, I am

Sincerely yours,

WILLIAM E. FOLEY,
Director.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES OF JUDGES

For salaries of circuit judges; district judges (including judges of the district courts of the Virgin Islands, the Panama Canal Zone, Guam, and the Northern Mariana Islands); and justices and judges retired or resigned under title 28, United States Code, sections 371, 372, and 373; [and annuities of widows of Justices of the Supreme Court of the United States in accordance with title 28, United States Code, section 375;] $54,500,000.

SURVIVORS ANNUITIES

Senator WEICKER. May I inquire as to the nature of this request?

Judge CLARK. Certain widows of the Supreme Court Justices have been receiving about $10,000 a year for their annuities. What we have done now is to request a supplemental appropriation of $616,000 which will fund an increase in these annuities to $20,000 a year. By placing this in the judicial survivors' annuities fund we are able to reduce or to offer a reduction of $50,000 in the present budget for salaries of Judges, and submit a language change in the budget to that effect.

Senator WEICKER. How many widows of Supreme Court Justices are there?

Judge CLARK. Six. They were discussed in our supplemental budget justification.

Senator WEICKER. Is the $20,000 they would receive the extent of their benefit?

Judge CLARK. Yes.

Senator WEICKER. Is there an additional pension?

Judge CLARK. It is on the fourth page of our statement. I know of no additional benefit.

Mr. Foley, perhaps you have something on that.

Mr. FOLEY. No.

Judge CLARK. But the effect of the change that I would request this committee to consider is that there would be a supplemental request in our budget this year of $616,000 which, if appropriated, would enable us to reduce our budget request for salaries of Judges by the $50,000 payable this year. Public Law 96-504 provided for an increase in their annual annuity in future years from $10,000 to $20,000. I believe all of the ladies are now quite elderly.

Mr. FOLEY. Yes; they are. I think they are 85, 87. These are the widows of Justices who passed away many years ago who did not have the opportunity to come into the system to take advantage of the Survivors Annuity Act.

Senator WEICKER. In other words, this is not for any future widow who operates under a different set of circumstances than the ones you are referring to here.

Mr. FOLEY. Yes, sir; recent widows also have been covered by the Judges' membership in the survivors annuity plan. These are older widows who have been widows, some of them, 30 years now.

Senator WEICKER. Thank you very much. I did not mean to interrupt you. Do you have anything to synopsize here?

Judge CLARK. No, sir; except to say that your synopsis offered in introducing the testimony was accurate. We view this generally as a caretaker budget. There are some substantial increases in the budget, but they are increases that the courts feel they must have to do the job that is expected of them by the legislative base on which we operate. We have absolutely no jurisdiction, as the committee members know, except that which is given to us by Congress. And the effort to discharge that jurisdiction results in the increases we have asked for this year.

Of course, we are here to explain any part of the program to the committee and to answer any questions that you wish to ask us.

ADDITIONAL PERSONNEL REQUESTED

Senator WEICKER. Included in the budget this year are substantial requests for additional positions—185 deputy clerks—51 for the appeals courts, 134 for the district courts; 634 clerical positions for the bankruptcy courts; and 125 legal assistants for the magistrates.

Last year we had a request for deputy clerks and we recommended a reprograming of positions from the Probation Service. I understand this was done. How many deputy clerks' positions were created as a result of that action?

Mr. GARABEDIAN. Edward Garabedian, Assistant Director with the Administrative Office.

We have created 175 deputy clerk positions, and the reprograming request was approved by this committee as well as the House Appropriations Committee.

Senator WEICKER. Did you say 180?

Mr. GARABEDIAN. 175 deputy clerk positions have been created. We intend to abolish I believe it is 70 probation officer positions and 45 clerical positions in the Probation Service.

Senator WEICKER. Fine. Have you done a work measurement study to determine if the additional 185 clerk positions are necessary this year?

Judge CLARK. There is a work measurement study in the courts. I am not sure of the completion date of that study.

Judge MAXWELL. November for the district courts.

Mr. GARABEDIAN. A Probation Service work measurement study will be completed before we formulate our 1983 budget. We expect we will complete it prior to the first of October.

Judge CLARK. Judge Maxwell informs me November 30 is the completion date for the district court clerks work measurement study.

BANKRUPTCY FILINGS

Senator WEICKER. The largest request is for $12,059,000 and 634 positions—583 clerks and 51 estate coordinators—for the Bankruptcy Courts. I note that during the last 2 years filings have gone from 240,000 to 475,000. What do you see as the reasons for this tremendous increase?

Judge CLARK. Mr. Chairman, I would like for Judge Kelley to discuss this matter with you.

Judge KELLEY. Mr. Chairman, and members of the subcommittee, many factors are involved. For 1 month, I took a survey of the debtors who passed through the Bankruptcy Court. Most of them blamed it on the inflation, the high cost of energy, and upon cutbacks in their work and in their employment. There has been discussion that the Bankruptcy Reform Act of 1978 might have been the cause for the increased filings. In the 1 month that we surveyed we found that 2 out of 200 knew of the new code but most of them were interested in keeping their cars from being repossessed or their houses from being foreclosed on or were looking for a plan under chapter 13 to pay their debts over an extended period of time. The increases have been rather staggering in the last couple of years, about a 75-percent increase in 1 year.

Senator WEICKER. Senator Hollings?

Senator HOLLINGS. Elaborate even a little more on the Bankruptcy Court. We were given that request. That is the one we did get, Mr. Chairman, last year. Then they withheld it. They said, "Wait a minute. That hasn't been cleared with the Administrative Office or the Judicial Conference" or whatever else you have. Is this all cleared now? How many positions are you asking for?

Judge KELLEY. I believe it is over 600. There was a work measurement study since last year. The Congress had asked the courts to go back and have a scientific measurement study performed. If you would look at the report that is going before the Judicial Conference this week on the work measurement study for Bankruptcy Courts, under the number of filings that now are being made, under the old formula, before the work study, the courts would have been entitled to, I believe, over 900 positions. The new study would cut out, based on the increased filings, about a third of the positions.

The increased filings, as you see, are almost double. There is additional jurisdiction now. There are many other civil cases being removed from State courts. There is no distinction between summary and plenary jurisdiction. So the courts have jurisdiction over the debtors and their property wherever it may be. It is just an inundation of work. The work measurement study, however, would reduce the number of personnel that would heretofore have been authorized.

Senator HOLLINGS. But rather than maintaining the 328 closings per clerk in 1981 you are dropping your productivity to 224 in 1982. Everybody around this town is talking about increased productivity. You are dropping your productivity.

Judge KELLEY. One of the reasons, I suggest, for that is contained in a letter from the Director to you last December when the courts were almost paralyzed from not having enough personnel. You have to do first things first. For example, if a trial is going to be held, the clerks have to get a notice out informing everyone of the date of the hearing. When the case has been completed, the last thing you do is close it. With the personnel the courts have, Senator, they have done the first things first.

CIRCUIT EXECUTIVES

Senator HOLLINGS. Thank you, Judge Kelley.

Judge Clark, on the Circuit Executives and then the newly imposed Assistants to the Circuit Executives, let's talk first about the Circuit Executives. As I understand it, when they were set up 10 years ago, they were ranked right in behind the Judges themselves; isn't that correct?

Judge CLARK. Senator, I don't know where their rank was. The courts have pretty assiduously tried to keep from ranking the Court Executive and the clerk and tried to keep from mixing the functions of the two offices.

Our Executive, who has been with us now for about 6 years, performs a variety of functions, most of them of the nature that the Judges themselves would have to do in the way of surveying plans under the Jury Act and the Speedy Trial Act and keeping abreast of what the District Courts are doing.

Senator HOLLINGS. That is my understanding, that it would be directly behind the circuit and District Judges with respect to judicial responsibilities and, more particularly, pay. That is what I had in mind, because they have been frozen in.

Judge CLARK. Yes, sir.

Senator HOLLINGS. Have you entertained any idea of requesting that the code be amended to eliminate the limitation on that or not?

Judge CLARK. Mr. Foley needs to respond to that.

Mr. FOLEY. The conference policy has been to treat Circuit Executives from a salary standpoint as we do the clerks of the major courts, the largest courts, who are classified at the Grade 16 level.

Judge CLARK. I was also under the impression, Mr. Foley, that there was some move afoot to request Congress to lift the present ceiling on these higher executive-level pay jobs.

Mr. FOLEY. This is all tied in with the overall pay problem.

Senator HOLLINGS. I understand. I don't want to sound offensive in any way, but as I understand it there were to be the head of the Administrative Office, Judges for Bankruptcy, right on down, and they were going to be directly in behind those. Put another way, if you had no limitation, would you increase the pay of your Executives?

Mr. FOLEY. Yes.

Senator HOLLINGS. Is that the position they had 10 years ago?

Mr. FOLEY. Yes; we do what you have suggested, Senator. We put them in behind the judicial officers.

ASSISTANT CIRCUIT EXECUTIVES

Senator HOLLINGS. What about the Assistant Circuit Executives? We tried 5 of the 15 proposed last year at the request of the Chief Justice. There are no more requests for that. Are they working out, not working out, or you don't need any more, or what?

Mr. FOLEY. This is a pilot program which has just recently been authorized. The five District Courts which will try this program have been selected and the courts are in the process now of selecting the appointees from the certified list. All Circuit Executives must, under the statute, be taken from a list of certified Executives. We have applied the same standard to the Assistant Circuit Executives that we apply to the Circuit Executives, because they will in effect in this pilot period be the Executives of five of the largest District Courts in the country.

Senator HOLLINGS. Back to the Circuit Executives, do you have one, for example, in the fifth and ninth but not in the first? Doesn't the first want one?

Mr. FOLEY. The first has never chosen to have one.

Senator HOLLINGS. They didn't choose to have one?

Mr. FOLEY. They never chose to have one.

Senator HOLLINGS. Yes; much less the Assistant. Is that right?

Judge CLARK. That is right.

Senator HOLLINGS. That is interesting.

Judge CLARK. The three of them sit en banc every time they sit.

Mr. FOLEY. It is the smallest circuit in the country from a work standpoint.

Senator HOLLINGS. Thank you very much, Mr. Chairman.

Senator WEICKER. Senator Rudman?

FRIVOLOUS CASES

Senator RUDMAN. I just want to ask Judge Clark a question, one I suppose that Senator Specter might have asked had he still been here, and one that I am curious about. What percentage, if you have one, are section 1983 cases, or how can you measure for us the impact of 1983 on your circuit? What kind of a flood of jurisdictional cases have you had under 1983? Up in our State in the circuit it has been very heavy. We are talking about the courts becoming clogged. That is why we are talking about these positions in the bankruptcy courts and other areas. Is there a measurable, definable increase in cases that you are hearing because of frivolous actions being brought?

Judge CLARK. Senator Rudman, not actions brought to the Court of

Appeals. I would like, if you would permit me, sir, to check the detailed statistics that would come from the District Courts. This is where they would be filed. I am sure this is the figure that the Justice had in mind when he gave it to you. On the Fifth Circuit, which handles more appeals than any other circuit in the United States, we have had this sort of an impact from 1983 appeals. If there is some problem occurring, it is occurring without our knowledge.

Judge MAXWELL. Senator, if I might speak from the District Court's vantage point, from 16 years of being there, we have grown from habeas corpus to 1983's, and we are now seeing a new wave of habeas corpus and 1983's.

In the Northern District of West Virginia I have two State penitentiaries, two juvenile detention facilities and one Federal facility. We find the frivolity—that is the issue we are really addressing—we find that very, very prevalent.

We find, for example, we have a regular form that we send out—we are mandated to do that—so they can just answer the questions yes or no and so forth. We find that these forms are being filled out by a "jailhouse lawyer" and xeroxed and names put on the top and signed at the bottom with the same allegations, hopefully alleging enough to get an evidentiary hearing, that "My counsel failed to properly represent me and I am being severely damaged or falsely imprisoned," as the case may be. We are finding a great deal of this.

Appellate decisions can help a great deal. For example, in the 1983 case, let's say that the Statute of Limitations is 2 years. Obviously, by any reading of the complaint that is brought forward, the action occurred 10 years ago. If true, the District Court should be able to take note of the Statute of Limitations and summarily dismiss it.

ACCESS TO THE COURTS

Senator RUDMAN. I asked the question having been the counsel for the defendant in probably 300 of these cases as attorney general of the State of New Hampshire and seeing the enormous escalation. In my view, Congress is going to have to put some sort of a choke across the jurisdictional access of the 1983 actions because of what has happened in District Courts. This gets into the very serious constitutional questions. You are talking about habeas corpus. You have a whole different area. Congress probably can't touch that. But I ask the question because I have read most of the reports of the various circuits in the past year, not because I knew I would be on this committee but because I was interested in what was going on.

It seems to me when we talk about the system breaking down, the kinds of things that the Chief Justice spoke of several months ago, we are really talking about access to the courts created by statutes in many cases having results that nobody anticipated. I expect before we talk about more money and building more courts and more Judges and more Clerks we ought to start looking at access and how we create that access, being mindful of people's constitutional rights. It is a rare opportunity to have you here across the table this morning to ask you those questions.

Judge CLARK. This is my first appearance as the chairman of this committee. It might be inappropriate, but I would just say amen as far as the workload on the Judge is concerned. You like to think you are doing something productive. You do see a number of 1983 actions that get to the Appellate Courts that are really worthless actions. But the law of the United States, imbedded in the decisions of the Supreme Court, are very clear that except in very unusual circumstances, you must hear these cases. You cannot take them off by summary procedures.

Senator RUDMAN. That is right.

Judge CLARK. There have been a number of cases in our courts where we have reversed District Judges and required them to have some sort of hearing. A summary judgment is not inappropriate in some actions. But dismissal of 1983 proceedings is not allowed because of *Comley* v. *Gibson*. This would play a part in it. Certainly we could expend the energies we now expend on these petitions on more worthwhile litigation if we had some different directions.

Now whether these can come from legislation or not would be a very tender thing. It would have to be structured very carefully to be constitutional.

Senator RUDMAN. Mr. Chairman, I think the other side of this coin is what the enormous costs are—not just for the courts but the State attorneys general offices, the district attorneys offices. The Legal Services Corporation is under attack. It might be spending too much time on 1983 actions rather than doing the things they should. And the total cost of some of these things is absolutely enormous.

Mr. FOLEY. I might add, Senator, the Judicial Conference has created an ad hoc committee to study precisely this problem. That committee is actively engaged in the study right now.

Senator RUDMAN. I would very much like to see whatever report comes out of that study.

Mr. FOLEY. I would expect a report from the fall session of the conference.

Senator RUDMAN. I would like to see that report, if I may.

Mr. Chairman, I have to leave for another hearing. Thank you very much.

Senator WEICKER. Thank you.

ADDITIONAL MAGISTRATES

You are requesting $939,000 for 6 new magistrates and 18 supporting positions—6 secretaries, 6 legal assistants, and 6 clerical assistants. In addition, there is a request for $3,467,000 for 125 legal assistants for the magistrates. What support staff do the magistrates currently have?

Judge CLARK. Every magistrate has a secretary and a clerical assistant at the present time, with the exception of a very few. If the legal assistant position is approved for approximately half of the full-time magistrates, the clerical assistant position will be transferred into the clerk's office in those cases where the determination has been made that the magistrate no longer warrants having a clerical assistant.

But he has right now a secretary and a clerical assistant. There are others that have only one support personnel.

Senator WEICKER. On what basis was it determined that 125 of the magistrates need legal assistants?

Judge CLARK. This is a program that went through the recommendation of the District Judge and then to the Council.

Bill, is there also a Judicial Conference approval behind the Circuit Court's approval?

Mr. FOLEY. Yes, sir; through the Magistrates Committee of the Judicial Conference.

Senator WEICKER. If we approve the request for legal assistants, would the magistrates need to retain their clerical assistants?

Judge CLARK. In some cases we think not. In some cases we know not. In other cases we think there may be a necessity for it. It just depends on how much assistance the clerk's office gives the magistrate. It is almost on an ad hoc basis.

I might add, Mr. Chairman, there was a report by the Judiciary Committee offered by Senator DeConcini of this committee in connection with the 1979 Magistrates Act which said that "The increasing number of more complex matters being referred to magistrates strongly suggests a developing need for some legal research assistants. The enactment of this bill will further heighten that need. At the same time, it is clear that not every magistrate has the need of a full-time law clerk at the present time." Our actions have been generally guided by that comment.

Senator WEICKER. I have other questions which I will submit for the record and ask that they be responded to.

Judge CLARK. Thank you very much.

Judge KELLEY. Mr. Chairman, may I put a few statistics together and insert a copy of that for the record?

Senator WEICKER. Absolutely.

[The statement follows:]

STATEMENT OF RALPH H. KELLEY

I very much appreciate this opportunity to appear before you in support of the 1982 budget estimates for the United States Courts. In particular I am here to discuss the United States Bankruptcy Court.

As you know there has been a staggering increase in the number of bankruptcies filed in the last few years.

During the twelve month period ended September 30, 1980, there were 421,426 new filings in the bankruptcy courts, an increase of 75.1% over the 240,654 filings during the same period last year. When compared to 1977, the increase is almost 100%.

No additional judges have been authorized or requested.

Some temporary clerical help has been authorized but in my opinion it is inadequate. In most districts clerical personnel are forced to work evenings and on Saturday.

The Director of the Administrative Office of the United States Courts, Mr. William E. Foley, last November wrote to this committee and stated:

> The increase in bankruptcy filings has had a crippling effect on the work of the bankruptcy offices. The clerks of the bankruptcy courts have requested and are in dire need of more clerical assistance which we cannot provide. Most offices have had to defer the closing of cases in order to meet deadlines in providing notices to creditors with respect to current filings. Deputy clerks are currently putting in many extra hours of overtime for which they are not being compensated. This has created serious morale problems in those offices and it is imperative that some relief be provided at the earliest possible date. I might add that as a result of the delay in the closing of cases, trustees are not being compensated on a timely basis and are refusing to accept appointments.

The following statistical information relates to filings in 1980. This information is on page 12.8 and note 5 of "The Judiciary" budget estimates for fiscal year 1982.

421,427	New Cases
8,000	Plenary Cases
50,000	Civil Complaints (Adversary Proceedings)
50,000	Contested Matters
529,427	Total

It is estimated that bankruptcy filings during the fiscal year 1982 will affect approximately 200,000 to 300,000 creditors in each state. This means that the bankruptcy courts will mail notices of bankruptcy to 10,000,000 creditors in the United States during fiscal year 1982.

When a bankruptcy case is filed, creditors are automatically enjoined from taking action against the debtor or his property. For example banks, loan companies, credit unions, and other creditors are enjoined from repossessing automobiles or foreclosing upon real estate or taking any action. In order to get relief from the automatic stay it may be necessary for several million creditors to file civil complaints. Each complaint will be set for an expedited hearing in the bankruptcy court.

All cases pending in state courts which involve the debtor or his property are enjoined. They may be removed to the bankruptcy court. In order to administer this heavy workload, bankruptcy courts probably need even more personnel than is requested in the 1982 budget.

On page 12.7 of "The Judiciary" budget estimates for fiscal year 1982 there appears the following quote:

> More persons are directly affected by the actions of the federal bankruptcy courts than all of the other federal courts combined.

A truer statement has never been printed in any budget estimate.

The Administrative Office of the United States

Courts recently completed a Work Measurement Study for the Office of Clerk, United States Bankruptcy Court. The new Work Measurement Study drastically curtails clerical positions. Under the old formula the bankruptcy courts, based on projected filings for fiscal year 1982, would be entitled to an increase of 978 permanent clerical positions.

Under the new formula only 659 positions would be authorized. The Budget Committee has reduced this figure by 25. It is requesting only 634 permanent clerical positions.

I support this reduced number even though it is my personal opinion that more clerical help is needed. Bankruptcy courts, like all agencies of the government, will have to do the best job possible with far less personnel than authorized by prior formulas.

Bankruptcy courts serve all fifty states. The clerk's office needs sufficient personnel to serve the millions of citizens who file claims, seek information and otherwise do business with the court.

In closing let me mention chapter 13 and chapter 11 cases. They are being filed in record numbers. These are rehabilitation cases for both individuals and businesses.

Creditors are being paid millions of dollars through court approved plans. Had Congress not streamlined the bankruptcy law, much relief would have been denied deserving individuals and businesses. The economny would be even worse off.

These are difficult economic times. The problems of our people and businesses are ending up in the bankruptcy courts in record breaking numbers. We request favorable consideration of our budget request so that we can serve millions of creditors and debtors who have urgent matters pending in the courts.

BANKRUPTCY TRUSTEE PROGRAM

Senator WEICKER. This is one question I would like to address to Judge Kelley.

The administration is proposing to eliminate the bankruptcy trustee program in the Justice Department and transfer the responsibilities to the courts. I believe there are some 167 positions currently connected with the program, at a cost of about $7 million. Have there been any discussions with the courts about this matter?

Judge KELLEY. Very little, I believe, Senator. The U.S. trustee program, as you know, was created as a part of the Bankruptcy Reform Act of 1978. It was to run until April 1, 1984, and it would either sunset or the Congress would continue it. It has been under the administration of the Justice Department. They have all the facts and statistics about the administration of that program.

In the districts where you do not have the program, the Bankruptcy Division has asked for an estate coordinator—that is one position, a deputy clerk—who would help with the administration of bankruptcy estates.

A subsequent request is in where you have divisions many miles from the headquarters office, to have another deputy to handle the estates in that location. I would assume if Congress in its wisdom acts to eliminate that, that the Bankruptcy Division would ask you to treat the pilot districts exactly as you treated all of the nonpilot districts, by putting an estate coordinator in there. An estimate would be roughly 25 positions, I suppose. But this is not in any way an evaluation of the program. That is within the Justice Department. We have no information other than the Attorney General's annual report.

Senator WEICKER. Of course, if they eliminated it, you would have to pick it up.

Judge KELLEY. That is right. I have just estimated in rough figures the number of positions that would be required.

Senator WEICKER. All right, gentlemen. Thank you very much.

At the request of the committee, Judge Clark offered the following written remarks in response to questions raised earlier by Senator Specter relative to the Circuit Courts of Appeals.

[The information follows:]

Senator Specter, in questioning Justices Powell and Rehnquist, asked whether it might be appropriate for Congress to consider an appellate court analogue to the Speedy Trial Act now applicable to United States district courts. He observed that as a practicing attorney he had experienced appellate level delays due to learned and extensive opinions of questionable necessity and wondered whether time limitations might cause an accommodation which would alleviate these delays. He also asked if it would be appropriate to encourage bench opinions. Unfortunately, before the budget presentations were made for courts of appeals, Senator Specter had to leave the hearings.

With the hope that detailed information from the court of appeals level may be helpful to Senator Specter and the Committee, I furnish the following additional responses.

On the 29th day of October, 1971, the Judicial Conference of the United States adopted a resolution concerning the expediting of criminal cases at the appellate level. A xerox copy of the resolution of the Conference is attached as Exhibit A. Pursuant to the resolution, the court on which I serve (United States Court of Appeals for the Fifth Circuit) adopted a plan for expediting criminal appeals, attached as Exhibit B. The Clerk reports that the latest statistics disclose that this circuit is meeting its stated goal. I seriously doubt the wisdom of adding a statutory provision regarding the expedition of criminal appeals to the plans already adopted and now being operated in the various courts of appeals. I would most strongly recommend against it until the Congress clarifies the present hodgepodge of priorities imposed on appellate courts in connection with various enabling statutes. We have collected these calendaring priorities in our local rules, a copy of which is attached as Exhibit C.

At the present time, the courts of appeals are comparable to a balloon completely full of air: pressure to expedite at one point must cause a bulge which slows down some other area. This is best demonstrated by Table 1 from the Annual Report of the Director of the Administrative Office for the year 1980, which discloses that despite an increase in the number of appeals terminated, the number of appeals filed continues to rise at an even faster pace. The result is that the number of cases pending in courts of appeals has increased each year since 1962. A copy of the table is attached as Exhibit D. I also include a copy of Table 3 from this report which classifies appeals by nature of suit or offense, so that the type of appeal generating the appeals courts' present business may be seen. This is Exhibit E. It shows that less than 25 percent of our appellate caseload is comprised of criminal cases. The Director's latest quarterly report, appended as Exhibit F, discusses cases under submission for more than three months. Unfortunately, it does not separate criminal and civil cases. In the case of the Fifth Circuit, only 20 of the 124 cases under submission for more than three months are criminal.

It may be that Senator Specter's concerns encompass the expedition of civil as well as criminal cases in the appellate courts. If this is true, it heightens the need for awaiting a congressional resolution of the issue concerning priorities, lest a direction to expedite cases in general would come into conflict with prior statutory directions to expedite specific categories of appeals. Furthermore, since the system is currently overloaded, a directive to decide all appeals within fixed timeframes will require revisions in (1) the present system of record preparation under which court reporter transcripts are now our principal source of delay, (2) briefing times provided by the Federal Rules of Appellate Procedure, and (3) scheduling oral arguments. In the more widespread circuits where lawyers may have to travel up to 1,000 miles to attend argument sessions, this scheduling is usually made-up several weeks in advance.

While delays in rendering decisions caused by overly long and complex opinions are undesirable, the number of such cases is not significant enough to change the median time if all of them were eliminated.

Bench opinions are already used in many cases in the Second Circuit. Other circuits are using forms of decision-making which accomplish as much in time-saving as bench decisions. The Second Circuit system works well where lawyers and judges are located relatively close to the court. In circuits covering larger geographic areas, use is made of techniques such as screening of cases on the briefs for disposition without oral argument and rendering decisions without written opinion or on brief per curiams. The processes adopted by most circuits are the product of an interplay between judges and the bars involved. Perhaps Senator Specter would be interested in the proposal for discretionary review in courts of appeals suggested by Chief Judge Donald P. Lay of the Eighth Circuit in 34 Southwestern Law Journal 1151 (February 1981).

Senator Rudman asked about the impact of frivolous actions brought under § 1983. These filings are a problem for all courts and their impact is presently under study by a committee of the Judicial Conference of the United States chaired by Judge Ruggero Aldisert of Pittsburg. Of course, the problem comes in separating the wheat from the chaff. Not all inmate petitions are frivolous. The Director's Annual Report contains statistics for both courts of appeals, Exhibit G, and district courts, Exhibit H. Our own circuit experienced only 18 prisoner petitions during the month of February, which was not enough to cause a significant problem. See Exhibit I. Legislation would have to be most carefully constructed to pass constitutional muster.

EXHIBIT A

Resolution of Expediting Appeals

The Conference expressed the view that the causes of delay in the final disposition of cases should be treated at all levels, and so it was agreed to recommend that each judicial council should urge that appeals be expedited and that each circuit should develop plans to perfect appeals with less than a full transcript where possible, consistent with the interests of justice. Likewise, it was agreed that the counsel who tried the case should normally handle the appeal. After considerable discussion, the following resolution was approved for transmittal to all federal judges:

The Conference believes the causes of delay in the final disposition of criminal cases should be treated simultaneously at all levels and that rules or procedures to expedite trials without expediting disposition of appeals will not alone afford satisfactory solutions. The Conference is aware of the multiple causes of delay in the disposition of appeals including the increasing volume of appeals under the Criminal Justice Act, the tendency to demand full transcripts of trials, especially when new counsel is appointed on appeal, the difficulty of promptly securing transcripts from court reporters, and other factors.

It is the sense of the Conference that a substantial number of criminal appeals can be fairly conducted without a full transcript of all testimony and proceedings.

The Conference is particularly concerned about (a) delay in disposition of cases in which an accused is in custody pending trial, and in which a convicted person is in custody pending appeal; and (b) delays in disposition of trials and appeals in which an accused or convicted person is at large pending trial or appeal, where there is a risk of repeated criminal conduct, the probability of flight, or other danger to the community.

Against this background and having in mind the action of the Conference today in requesting the Supreme Court to approve the proposed rule 50(b) of Federal Criminal Procedure, requiring District Courts to develop plans for speedy trials in criminal cases, it is resolved and recommended:

1. that each Court of Appeals should forthwith develop a plan to expedite the processing of criminal appeals to the end that such appeals shall be speedily heard and that, if the conviction is affirmed, the sentence will be speedily carried out;

2. that among other methods, the processing of appeals should be expedited by such steps as the following:

   (a) Except in unusual circumstances and for good cause shown, trial counsel should be appointed to conduct all appeals falling under the Criminal Justice Act;

   (b) All counsel should be required to exhaust all efforts to perfect appeals without full trial transcripts, by use of such traditional devices as preparation of an agreed statement or other summary of the evidence;

   (c) Courts should encourage counsel to utilize the provision of the Federal Rules of Appellate Procedure dispensing with printed briefs;

   (d) Courts should study methods designed to limit oral arguments to cases where this would assist the court and the writing of opinions to cases involving serious issues of law.

Adopted by the Judicial Conference of the United States this 29th day of October, 1971.

The Director of the Administrative Office is instructed to furnish copies of this Resolution to all federal judges without awaiting publication of the proceedings of the Conference.

EXHIBIT B

APPENDIX

Plan for Expediting Criminal Appeals

Effective February 1, 1972

A.1 Goal. Final appellate disposition of criminal cases within a period of six months from the notice of appeal to the decision in this Court is the goal of the Council. Analysis of the individual time factors inherent in the various steps of the appellate process dictates that anything less than six months would be unrealistic. Since a goal of six months appears to be possible, national concern mandates and justice requires that this shortest period be established as our goal.

A.2 Policy. The Council adopts the following policy statement for issuance by the Clerk to the Bar through the office of the Chief Judge:

"Fifth Circuit Policy Regarding Prompt Processing of Criminal Appeals

"Delays in the final disposition of criminal cases are a matter of increasing and justified concern. By statute, criminal appeals must be expedited. Extensions of the time intervals fixed by the rules governing all phases of criminal appeals will not be authorized, except for the most compelling reasons. Counsel will be subject to appropriate disciplinary action for violation of these rules.

John R. Brown
Chief Judge
For the Court"

A.3 Procedures.

A.3.1 Criminal Appeals Unit. There shall be established in the office of the Clerk a Criminal Appeals Unit which is charged with the responsibility of (1) communicating Court policies; (2) supervising the processing of each criminal case on an individual basis; and (3) assembling individual data on reporters, clerks and counsel for Council study and evaluation. The procedures and systems to

be utilized will be established by the Clerk with the approval of the Council's Committee for Expediting Criminal Appeals.

A.3.2 Filing of Reporters' Transcripts. If the six-month goal is to be attained, it will be essential that District Courts require court reporters to give preference to filing transcripts in criminal cases so that in other than exceptional cases the record can be transmitted within the initial 40-day period provided by FRAP 11.

A.3.3 Communications to Counsel and Reporters. The Clerk's office shall dispatch the following communications to court reporters and attorneys representing defendants and the United States:

.1 Notices to Appellant's Counsel. Upon receipt of the notice of appeal, the Criminal Appeals Unit shall immediately communicate directly with counsel for appellant, advising counsel of the policy, rule requirements and counsel's obligations, and setting out the exact dates on which various steps must be performed. The letter will require an acknowledgment and a commitment to comply with the schedule so set.

.2 Notices to Reporters. At that same time, the Criminal Appeals Unit shall communicate directly with the reporter involved, informing the reporter that a notice of appeal has been filed, and directing the reporter to immediately advise the Court whether a transcript has been ordered with payment arranged, and requiring from the reporter an acknowledgment and commitment that the Court's policy and rules will be observed.

.3 Notices to U.S. Attorneys. Immediately upon the filing of the appellant's brief, the Criminal Appeals Unit will communicate the filing date, policy and rule requirements to the U.S. Attorney and obtain a like acknowledgment and commitment.

A.3.4 Typewritten Briefs. All counsel will be encouraged to make formal filings and service on counsel opposite by typewritten copies of their briefs, substituting printed or reproduced copies in compliance with the rules within 7 days thereafter.

A.3.5 Screening and Calendaring Criminal Appeals. The Council has established criminal appeals as requiring the highest priority in screening, calendaring and decision. Special procedures

shall be followed to reinforce this priority both in the routing and return of cases to be screened and in calendaring practices. These procedures shall be reviewed and if necessary revised from time to time by the Clerk with the approval of the Committee for Expediting Criminal Appeals.

A.3.6 Disposition. The priority required to be accorded to criminal cases shall continue after hearing or submission and until final determination and disposition and each Judge shall give criminal cases priority in the preparation and publication of opinion over all other cases except previously submitted cases of like kind.

A.4 Disciplinary Action. For conduct unbecoming a member of the Bar or for failure of counsel to comply with this Plan or the applicable Federal Rules of Appellate Procedure or Local Rules of this Circuit, a show cause order as provided by FRAP 46(c) will be utilized. Such punishment shall be imposed upon delinquent counsel as may be individually appropriate, ranging from reprimand to fine or Criminal Justice Act financial deduction to disbarment.

A.5 Committee for Expediting Criminal Appeals. The Committee for Expediting Criminal Appeals heretofore designated by the Chief Judge shall be continued and shall supervise the work of the Clerk under this plan and study further ways and means of expediting criminal appeals and make appropriate reports and recommendations to the Council.

EXHIBIT C

Rule 19. Calendaring Priorities

The following categories of cases will be given preference in processing and disposition in accordance with the statutes shown. To assist the Clerk in implementing this rule, any party to a civil appeal or review proceeding requiring priority status, should notify the Clerk and cite the statutory support for the preference.

19.1 Appeals - District Courts.

19.1.1 Criminal and Criminal-related Proceedings Recalcitrant Grand Jury Witnesses - orders of confinement. [28 U.S.C. Sec. 1826]

Criminal Cases. [Fed. R. App. P. 45(b)]

Habeas Corpus - actions under 28 U.S.C. Secs. 2241 and 2254 from judgments of state courts, and habeas corpus actions under the Immigration and Naturalization Act. 8 U.S.C. Secs. 1105A(a)(9) and (b) and Sec. 1503(c).

2255 Appeals - actions under 28 U.S.C. Sec. 2255 for relief from sentences of federal courts.

Release in Criminal Cases - orders setting conditions of release. [18 U.S.C. Sec. 3147 and Fed. R. App. P. 9]

19.1.2 Civil Proceedings.

Extraordinary Writs - petitions for extraordinary writs such as injunction, mandamus or prohibition under Fed. R. App. P. 8 and 21. [Fed. R. App. P. 21(b) and (c)]

Bankruptcy Act: Railroad Reorganization - orders fixing operating cost allowances. [11 U.S.C. Sec. 205]

Federal Election Campaign Act - actions under 2 U.S.C. Sec. 437g. [2 U.S.C. Sec. 437g(a)(11)] Certified questions of constitutionality of the Federal Election Campaign Act under 2 U.S.C. Sec. 437h are required to be expedited and heard by the Court en banc. [2 U.S.C. Sec. 437h(c)]

Freedom of Information Act - actions under 5 U.S.C. Sec. 552. [5 U.S.C. Sec. 552(a)(4)(D)]

Norris-LaGuardia Act - injunctions in labor disputes issued pursuant to 29 U.S.C. Sec. 107 [29 U.S.C. Sec. 110]

Internal Revenue - summons enforcement appeals [26 U.S.C. Sec. 7609(h)(2)]

Grant or Denial of Motions to Disqualify Counsel - Fifth Circuit Judicial Council action 1/11/80.

19.2 Petitions for Review or Appeals - Agencies, Boards Commissions.

National Labor Relations Board - enforcement or review of orders. [29 U.S.C. Sec. 160]

Nuclear Regulatory Commission - any proceeding to enjoin, set aside, suspend or determine the validity of final orders of the Commission related to patent licensing or construction permits made reviewable by 42 U.S.C. Sec. 2239. [28 U.S.C. Sec. 2349]

Interstate Commerce Commission - all proceedings for judicial review of final orders and decisions of the Commission made reviewable by 28 U.S.C. Sec. 2321, [28 U.S.C. Sec. 2349] and cease and desist orders based on violations of anti trust laws in 15 U.S.C. Sections 13, 14, 18 and 19. [15 U.S.C. Sec. 21(e)]

Board of Governors of the Postal Service - decisions approving, allowing or modifying decisions of the Postal Rate Commission. [39 U.S.C. Sec. 3628]

Environmental Protection Agency - orders of the Administrator under the Federal Environmental Pesticide Control Act of 1972 [7 U.S.C. Secs. 136d(c)(4) and 136m]; and regulations promulgated by the Administrator establishing tolerances for or exempting pesticide chemicals under the Federal Insecticide, Fungicide or Rodenticide Act. [21 U.S.C. Sec. 346a(i)(5)]

Federal Trade Commission - cease and desist orders based on violations of 15 U.S.C. Sec. 45 of the Federal Trade Commission Act, [15 U.S.C. Sec. 45(e)] and on violations of antitrust laws in 15 U.S.C. Secs. 13, 14, 18 and 19. [15 U.S.C. Sec. 21(e)]

Secretary of Health, Education, and Welfare - orders or regulations related to the safety of food additives under the Food, Drug and Cosmetic Act. [21 U.S.C. Sec. 248(g)(2)]

Federal Communications Commission,
Civil Aeronautics Board, and
Federal Reserve Board - cease and desist orders based on violations of antitrust laws in 15 U.S.C. Secs. 13, 14, 18 and 19. [15 U.S.C. Sec. 21(e)]

Railroad Retirement Board - orders under the Railroad Unemployment Insurance Act. [45 U.S.C. Sec. 355(f)]

Occupational Safety and Health Review Commission - review of orders. [29 U.S.C. Sec. 660(a)]

Commodity Futures Trading Commission - orders suspending or revoking the designation of a board of trade as a contract market. [7 U.S.C. Sec. 8]

Small Business Administration - review of license revocation, license suspension, or cease and desist orders issued against small business investment companies. [15 U.S.C. Sec. 687a]

Secretary of Labor - actions withholding certification of States pursuant to 26 U.S.C. Sec. 3033(b) and Sec. 3304(c) of the Federal Unemployment Tax Act, or findings by the Secretary of Labor pursuant to 42 U.S.C. Secs. 503(a), (b) and (c) which disqualify States for payments under the Act, if preference is requested. [26 U.S.C. Sec. 3310 and 42 U.S.C. Sec. 504]

Secretary of Treasury - actions determining that a State's income tax laws do not qualify for federal collection under 26 U.S.C. Sec. 6362, if preference is requested. [26 U.S.C. Sec. 6363(d)]

Federal Communications Commission - any proceeding to enjoin, set aside, annul or suspend any final order of the Commission brought pursuant to 47 U.S.C. Sec. 402(a). [28 U.S.C. Sec. 2349]

Secretary of Agriculture - appeals from cease and desist orders regarding violations of the Federal Seed Act. (7 U.S.C. Secs. 1599, 1600)]7 U.S.C. Sec. 1600] Appeals from cease and desist orders regarding violations of the Packers and Stockyards Act. (7 U.S.C. Secs. 193, 194) [7 U.S.C. Sec. 194(d)] Petitions to enjoin, set aside, suspend or determine the validity of orders of the Secretary under

the Perishable Agricultural Commodities Act, 1930. (7 U.S.C. Secs. 499a - 499f and 499h - 499s) [28 U.S.C. Sec. 2349]

Federal Maritime Commission - all proceedings for judicial review of final orders and decisions of the Commission under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933 (46 U.S.C. Secs. 801-848) made reviewable by 46 U.S.C. Sec. 830. [28 U.S.C. Sec. 2349]

EXHIBIT D

U.S. COURTS OF APPEALS

Summary of Workload

During the twelve month period ended June 30, 1980, 23,200 appeals were filed in the United States Courts of Appeals. This was an increase of 14.7 percent over the 20,219 cases filed in 1979 and is the largest increase over a previous year since before 1962. Similarly, the number of cases disposed of by the Courts of Appeals increased 10.3 percent from 18,928 in 1979 to 20,887 in 1980. The large increase in filings without a matching increase in terminations resulted in the appellate pending caseload rising 12.9 percent to 20,252 cases. Table 1 provides a summary of the appellate caseload for each of the twelve month periods ended June 30, 1962 - 1980.

Table 1
Appeals Filed, Terminated and Pending in the U.S. Courts of Appeals
For the Twelve Month Periods Ended June 30, 1962 - 1980

Year Ended June 30	Number of Judgeships as of June 30	Filed	Terminated	Pending	Increase in Appeals Pending
1962	78	4,823	4,167	3,031	656
1963	78	5,437	5,011	3,457	426
1964	78	6,023	5,700	3,780	323
1965	78	6,766	5,771	4,775	995
1966	88	7,183	6,571	5,387	612
1967	88	7,903	7,527	5,763	376
1968	97	9,116	8,264	6,615	852
1969	97	10,248	9,014	7,849	1,234
1970	97	11,662	10,699	8,812	963
1971	97	12,788	12,368	9,232	420
1972	97	14,535	13,828	9,939	707
1973	97	15,629	15,112	10,456	517
1974	97	16,436	15,422	11,470	1,014
1975	97	16,658	16,000	12,128	658
1976	97	18,408	16,426	14,110	1,982
1977	97	19,118	17,784	15,444	1,334
1978	97	18,918	17,714	16,648	1,204
1979	132	20,219	18,928	17,939	1,291
1980	132	23,200	20,887	20,252	2,313
Percent Change 1980 Over					
1962	69.2	381.0	401.2	568.2	-
1969	36.1	126.4	131.7	158.0	-
1974	36.1	41.2	35.4	76.6	-
1978	36.1	22.6	17.9	21.6	-
1979	-	14.7	10.3	12.9	-

EXHIBIT E

Table 3
Nature of Suit or Offense of Appeals from the U.S. District Courts Filed in the U.S. Courts of Appeals for the Twelve Month Periods Ended June 30, 1979 and 1980

Nature of Suit or Offense	1979	1980	Percent change[1] 1980 over 1979
Total cases	16,332	19,259	18.0
Total civil cases	12,220	14,854	21.6
U.S. cases	3,983	4,654	16.8
U.S. plaintiff	720	869	20.7
Contract actions	84	99	84.7
Real property actions	71	101	42.3
Civil rights	49	62	26.5
Labor laws	46	68	47.8
All other	490	539	10.0
U.S. defendant	3,263	3,785	16.0
Contract actions	158	179	13.3
Real property actions	89	83	1.6
Tort actions	308	324	5.2
Civil Rights	432	454	5.1
Prisoner petitions:			
Motions to vacate sentence	389	450	15.7
Habeas corpus	214	302	41.1
Prisoner civil rights	102	159	55.9
Other prisoner petitions	70	96	37.1
Social security laws	574	627	8.2
Tax suits	206	197	-4.4
All other	748	934	24.9
Private cases	8,237	10,206	23.8
Federal question	6,208	7,728	24.5
Contract actions	201	252	25.4
Tort actions	412	497	20.6
Civil rights	1,795	2,145	19.5
Antitrust	274	343	25.2
Prisoner petitions:			
Habeas corpus	859	1,020	18.7
Prisoner civil rights	1,069	1,578	47.6
Other prisoner petitions	50	70	40.0
Labor laws	363	417	14.9
Copyrights, patent and trademark	232	270	16.4
All other	953	1,136	19.2
Diversity of citizenship	1,991	2,427	21.9
Contract actions	1,129	1,362	20.6
Tort actions	775	996	28.5
All other	87	69	-20.7
General Local Jurisdiction	38	45	18.4
Contract actions	10	10	-
Tort actions	11	14	-
Prisoner petitions	-	7	-
All other	17	14	-
Total criminal cases	4,102	4,405	7.4
Homicide	41	52	26.8
Robbery and burglary	291	310	6.5
Larceny and theft	247	244	-1.2
Embezzlement and fraud	689	826	19.9
Auto theft	95	64	-32.6
Narcotics	1,371	1,369	-0.1
Extortion, racketeering and threats	153	251	64.1
Firearms	221	175	-20.8
Forgery and Counterfeiting	188	214	13.8
All other	806	900	11.7

[1] Percent not calculated where base is 25 or less.
* Data Revised.

EXHIBIT F

Cases Under Submission in the Courts of Appeals and Other Federal Courts

The total number of cases held under submission over 90 days in the United States courts of appeals and the Court of Claims for the quarter ended December 31, 1980 increased by 39.5 percent (or 169 cases) over the 428 cases reported for the same period in 1979. Cases awaiting the submission of additional memoranda or briefs, or awaiting an opinion in another case are not included.

Compared to the same quarter in 1979 only the District of Columbia and Seventh circuits reported reductions in the number of cases under submission. All other circuits reported increases ranging from one case in 1979 to three cases in 1980 in the Third Circuit, to an increase of 67 cases in the Fifth Circuit. The judges of the Ninth Circuit reported 161 cases, or 27.0 percent of all cases under submission. Similarly, judges in the Fifth Circuit reported 124 cases, or 20.8 percent of all cases under submission.

Table 4 provides, by circuit, the 597 cases reported under sumbission. Of these, 273, or 45.7 percent, were submitted for more than three but less than six months; 187, or 31.3 percent, were submitted for more than six but less than nine months; 71, or 11.9 percent, were submitted for more than nine months but less than one year; and 66, or 11.1 percent were submitted for more than one year.

Table 4
Cases Under Submission More Than Three Months
On December 31, 1980

Court	Total	More than 3 but less than 6 months	More than 6 but less than 9 months	More than 9 months but less than 1 year	More than 1 year
Total	597	273	187	71	66
Courts of Appeals					
District of Columbia	51	9	13	17	12
First	15	14	1	-	-
Second	18	11	5	-	2
Third	3	3	-	-	-
Fourth	30	13	9	5	3
Fifth	124	37	70	14	3
Sixth	50	23	18	4	5
Seventh	33	21	5	2	5
Eighth	20	14	4	2	-
Ninth	161	84	50	14	13
Tenth	91	44	11	13	23
Court of Claims	1	-	1	-	-
Court of Customs and Patent Appeals	-	-	-	-	-
Temporary Emergency Court of Appeals	-	-	-	-	-

Only the First, Third, and Eighth circuits reported no cases under submission over one year. The remaining circuits reported a total of 66 cases in this category ranging from two cases in the Second Circuit to 23 in the Tenth Circuit.

The Court of Customs and Patent Appeals and the Temporary Emergency Court of Appeals reported no cases under submission over 90 days on December 31, 1980.

EXHIBIT G

Impact of State Prisoner Petitions

During the twelve month period ended June 30, 1980, 2,668 petitions were filed in the Courts of Appeals by state prisoners. This is an increase of 34.9 percent over the previous high of 1,978 filed in 1979. State prisoner petitions now represent 11.5 percent of total filings in the Courts of Appeals, up from 9.8 percent a year ago. The most significant impact of state prisoner petitions on appellate workload was in the Fourth Circuit, where 32.2 percent of all state prisoner appeals were filed. These petitions represented 38.9 percent of all cases filed in the Fourth Circuit. State prisoner appeals as a percent of total filings range in the other circuits from 15.2 percent in the Sixth Circuit to 0.9 percent in the District of Columbia. Table 4 provides a comparison, by circuit, of the impact of state prisoner petitions on appellate workload.

Table 4
IMPACT OF STATE PRISONER PETITIONS
ON FILINGS IN THE UNITED STATES COURTS OF APPEALS
FOR THE TWELVE MONTH PERIOD ENDED JUNE 30, 1980

CIRCUIT	NUMBER FILED	PERCENT OF TOTAL FILED	TOTAL FILINGS	PERCENT PRISONER PETITIONS TO FILINGS	FILINGS EXCLUDING STATE PETITIONS
TOTAL.....	2,668	100.0	23,200	11.5	20,532
DISTRICT OF COLUMBIA..	15	0.6	1,609	0.9	1,594
FIRST.....	42	1.6	801	5.2	759
SECOND.....	164	6.1	2,171	7.6	2,007
THIRD.....	193	7.2	1,999	9.7	1,806
FOURTH.....	858	32.2	2,206	38.9	1,348
FIFTH.....	324	12.1	4,225	7.7	3,901
SIXTH.....	319	12.0	2,103	15.2	1,784
SEVENTH.....	253	9.5	1,799	14.1	1,546
EIGHTH.....	114	4.3	1,147	9.9	1,033
NINTH.....	214	8.0	3,738	5.7	3,524
TENTH.....	172	6.4	1,402	12.3	1,230

EXHIBIT H

Prisoner Petitions

Petitions filed by state and federal prisoners comprise a significant portion (13.8 percent) of civil litigation in the district courts. During the twelve month period ended June 30, 1980, petitions by state prisoners comprised 11.6 percent of all civil filings and federal prisoners 2.2 percent. While the number of total state prisoner petitions continued to increase (reaching an all-time high of 19,574 cases), petitions from federal prisoners declined for the second consecutive year, dropping to 3,713 cases. This decline corresponds to the drop in the number of prisoners confined in Federal institutions administered by the U.S. Bureau of Prisons. This represents the lowest total since 1969 and is 26.4 percent below the all-time high of 5,047 cases in 1975. Table 20 shows prisoner petitions compared to total filings for the twelve month periods ended June 30, 1960 through 1980.

The overall rise in state prisoner petition filings is the result of increases in civil rights petitions which rose 10.7 percent to 12,397 in 1980. Other state prisoner petitions declined. Filings of all types of federal prisoner petitions declined with the exception of civil rights cases, which increased 2.6 percent. Table 21 provides a comparison of prisoner petition filings, by type, for each of the twelve month periods ended June 30, 1975 through 1980.

Table 20
Civil Cases Filed in the U.S. District Courts Showing Prisoner Petitions, for the Twelve Month Periods Ended June 30, 1960 - 1980

Year	All civil filings		U.S. civil		Private civil	
	Total	Prisoner Petitions	Total	Prisoner Petitions	Total	Prisoner Petitions
1960	59,284	2,177	20,840	1,305	38,444	872
1961	58,293	2,609	19,843	1,589	38,450	1,020
1962	61,836	2,948	20,298	1,496	41,538	1,452
1963	63,630	4,254	21,385	1,630	42,245	2,524
1964	66,930	6,240	22,288	2,098	44,642	4,142
1965	67,678	7,888	21,651	2,559	46,027	5,329
1966	70,906	8,540	23,181	2,292	47,725	6,248
1967	70,961	10,443	21,593	2,639	49,368	7,804
1968	71,449	11,152	19,666	2,851	51,783	8,301
1969	77,193	12,924	22,295	3,612	54,898	9,312
1970	87,321	15,997	24,985	4,185	62,356	11,812
1971	93,396	16,266	25,086	4,121	68,310	12,145
1972	96,173	16,267	26,729	4,179	69,444	12,088
1973	98,560	17,218	27,484	4,535	71,076	12,683
1974	103,330	18,410	27,585	4,987	75,945	13,423
1975	117,320	19,307	31,779	5,047	85,541	14,260
1976	130,597	19,809	38,864	4,780	90,733	15,029
1977	130,567	19,537	40,210	4,691	90,357	14,846
1978	138,770	21,924	46,811	4,955	91,958	16,969
1979	154,666	23,001	55,840	4,499	98,826	18,502
1980	168,789	23,287	63,628	3,713	105,161	19,574
Percent change 1980 over:						
1960	184.7	969.7	205.3	184.5	173.5	2,144.7
1978	21.6	6.2	35.9	-25.1	14.4	15.4
1979	9.1	1.2	13.9	-17.5	6.4	5.8

Table 21
Prisoner Petitions Filed in the U.S. District Courts
For the Twelve Month Periods Ended June 30, 1975 - 1980

Type of Petition	1975	1976	1977	1978	1979	1980	Percent Change 1980 over 1975	Percent Change 1980 over 1979
Total All Petitions	19,307	19,809	19,537	21,924	23,001	23,287	20.6	1.2
Petitions by Federal Prisoners	5,047	4,780	4,691	4,955	4,499	3,713	-26.4	-17.5
Parole Commission Reviews	862	538	237	121	87	52	-92.1	-40.2
Motions to Vacate Sentence	1,690	1,692	1,721	1,924	1,807	1,322	-21.8	-30.7
Habeas Corpus	1,682	1,421	1,538	1,730	1,577	1,413	-16.0	-10.4
Other Prisoner Petitions	1,013	1,128	1,025	1,180	928	926	-8.6	-0.2
Mandamus, etc.	535	626	542	544	340	323	-39.6	-5.0
Civil Rights	478	502	483	636	588	603	26.2	2.6
Petitions by State Prisoners	14,260	15,029	14,846	16,969	18,502	19,574	37.3	5.8
Habeas Corpus	7,843	7,833	6,866	7,033	7,123	7,031	-10.4	-1.3
Other Prisoner Petitions	6,417	7,196	7,980	9,936	11,379	12,540	95.4	10.2
Mandamus, etc	289	238	228	206	184	146	-49.5	-20.7
Civil Rights	6,128	6,958	7,752	9,730	11,195	12,397	102.3	10.7

TABLE OF NEW APPEALS DOCKETED BY CASE TYPE - 1980-1981 - UNIT A

Case Type	(a) Mo. % 1980-81	(b) Cumulative % '79-'80	(b) Cumulative % '80-'81	(c) 1979-1980	(d) 1980-1981	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June
DIRECT CRIMINAL	14.4	19.9	14.4	251	201	28	28	25	21	35	19	23	22				
PRISONER CASES	3.9	3.5	3.6	44	50	5	6	8	6	7	8	4	6				
w/counsel																	
w/o counsel	7.8	4.8	5.6	61	78	11	7	9	11	10	7	11	12				
2255																	
w/counsel	0.7	0.6	0.4	7	6	0	2	2	0	1	0	0	1				
w/o counsel	1.3	1.1	1.0	14	14	3	3	2	0	2	2	0	2				
SUB-TOTAL	28.1	29.9	25.0	377	349	47	46	46	38	55	36	38	43				
CIVIL																	
Private Civil	30.7	31.1	31.9	393	445	61	76	54	61	41	55	50	47				
Diversity	(15.0)	(15.4)	(15.7)	(194)	(219)	(31)	(38)	(26)	(24)	(17)	(36)	(24)	(23)				
Fed.Quest.	(15.7)	(15.7)	(16.2)	(199)	(226)	(30)	(38)	(28)	(37)	(24)	(19)	(26)	(24)				
U. S. Civil	7.2	9.8	8.7	124	122	21	20	12	15	15	12	16	11				
Tax	1.3	1.7	2.6	22	36	3	5	3	7	5	6	5	2				
Bankruptcy	1.3	1.5	1.5	19	21	2	6	5	3	1	1	1	2				
N.L.R.B.	0.7	2.4	2.3	30	32	5	8	4	5	3	3	3	1				
Other Agency	10.5	8.0	10.5	102	148	23	20	15	20	22	19	13	16				
Civil Rights	15.0	12.9	15.0	163	209	31	25	24	33	21	28	24	23				
School	1.3	0.2	0.6	2	9	0	0	0	0	2	2	3	2				
Soc. Security	3.9	2.5	1.9	31	26	1	3	2	0	3	4	7	6				
SUB-TOTAL	71.9	70.1	75.0	886	1048	147	163	119	144	113	130	122	110				
TOTAL APPEALS EXCLUDING CROSS APPEALS	100.0	100.0	100.0	1263	1397	194	209	165	182	168	166	160	153				
TOTAL CROSS APPEALS	- - - - - - - - - - - -			223	254	54	33	31	36	20	21	29	30				
TOTAL ALL APPEALS	- - - - - - - - - - - -			1486	1651	248	242	196	218	188	187	189	183				

Legend:
Col: (a): Monthly Percentage Make-up of the New Filings.
(b): The Cumulative Percentage for the corresponding months in '79-'80 compared with '80-'81.
(c): The Cumulative Total filings for the corresponding number of months in '79-'80.
(d): The Cumulative Total for '80-'81.

EXHIBIT I

ADMINISTRATIVE OFFICE, U.S. COURTS

STATEMENT OF WILLIAM E. FOLEY, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

ACCOMPANIED BY:

EDWARD V. GARABEDIAN, ASSISTANT DIRECTOR FOR FINANCIAL MANAGEMENT AND MANAGEMENT REVIEW

DEWEY R. HEISING, CHIEF, FINANCIAL MANAGEMENT DIVISION

BUDGET REQUEST

Senator WEICKER. Our next request is that of the Administrative Office of the U.S. Courts. The amount requested is $20,490,000, an increase of $989,000 over the 1982 base, and provides for 528 permanent positions, an increase of 38 over 1981. The request includes $2,231,000 as adjustments to base, a net figure that reflects the transfer of 19 positions and $1,513,000 related to the transfer of COURTRAN costs from the Federal Judicial Center, as well as increased costs for travel, postage, contractual services, supplies and equipment.

Appearing on behalf of this request is Mr. William E. Foley, Director, who is accompanied by Mr. Edward V. Garabedian, Assistant Director for Financial Management and Management Review, and Dewey R. Heising, Chief, Financial Management Division.

PREPARED STATEMENT

Mr. Foley, we will be pleased to hear your statement. If you would like, you may submit your statement for the record and give us a summary.

Mr. FOLEY. If it is agreeable, Senator, I will submit my statement for the record and try to answer any questions you may have.

[The statement follows:]

77-482 O - 81 - 9 Pt. 1

STATEMENT OF WILLIAM E. FOLEY

I WISH TO THANK YOU FOR THIS OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE IN SUPPORT OF THE BUDGETARY REQUESTS I HAVE MADE FOR THE ADMINISTRATIVE OFFICE FOR THE FISCAL YEAR 1982. OUR BUDGET ESTIMATE FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1982, IS IN THE AMOUNT OF $20,490,000, WHICH INCLUDES A TRANSFER OF $1,513,000 AND 19 POSITIONS FROM THE FEDERAL JUDICIAL CENTER. EXCLUDING THIS TRANSFER AND OTHER ADJUSTMENTS TO THE BASE, WE ARE REQUESTING AN INCREASE OF $989,000 AND 19 NEW POSITIONS. OUR BUDGET JUSTIFICATIONS SUBMITTED TO YOUR COMMITTEE DESCRIBE IN DETAIL THE PURPOSE FOR WHICH THE ADDITIONAL FUNDS AND PERSONNEL ARE BEING REQUESTED AND HOW THEY WILL BE ALLOCATED AMONG THE DIFFERENT FUNCTIONS AND ORGANIZATIONAL UNITS OF THE ADMINISTRATIVE OFFICE.

AN IMPORTANT ELEMENT OF THIS APPROPRIATIONS REQUEST IS THE TRANSFER OF FUNDS, POSITIONS, AND EQUIPMENT FROM THE FEDERAL JUDICIAL CENTER TO THE ADMINISTRATIVE OFFICE BUDGET. DIRECTOR LEVIN WILL DESCRIBE THIS TRANSFER AND THE RATIONALE UNDERLYING IT IN HIS STATEMENT TO YOU. RATHER THAN REPEAT HERE WHAT HE WILL TELL YOU, I WOULD PREFER SIMPLY TO INCORPORATE BY REFERENCE IN MY STATEMENT THOSE PORTIONS OF HIS STATEMENT PERTAINING TO THE TRANSFER. I WOULD, OF COURSE, BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MIGHT WISH TO ASK ME. LATER IN MY STATEMENT, I SHALL EXPLAIN OUR REQUEST FOR SIX ADDITIONAL POSITIONS FOR THE ADMINISTRATIVE OFFICE TO FACILITATE THIS TRANSFER.

I AM SURE YOU WILL AGREE, MR. CHAIRMAN, THAT PLANNING A TRANSFER OF EQUIPMENT, PERSONNEL, AND FUNCTIONS OF THIS MAGNITUDE FROM ONE AGENCY TO ANOTHER IS VERY COMPLEX. IT HAS INVOLVED MANY MEETINGS DURING MANY MONTHS BETWEEN OFFICIALS

OF BOTH AGENCIES. I BELIEVE THAT THE TRANSFER WHICH IS PRESENTED IN OUR 1982 BUDGET SUBMISSION REFLECTS THE HIGH LEVEL OF COOPERATION WHICH EXISTS BETWEEN OUR RESPECTIVE AGENCIES. ALTHOUGH THE ADMINISTRATIVE OFFICE WILL OPERATE THE COURTRAN SYSTEM AS TRANSFERRED, WE WILL CONTINUE TO LOOK TO THE FEDERAL JUDICIAL CENTER FOR THE DEVELOPMENT OF NEW COMPUTER APPLICATIONS. WE WILL ALSO LOOK TO THE CENTER TO CONDUCT COST-BENEFIT STUDIES ON ALL NEW APPLICATIONS PRIOR TO THE ADMINISTRATIVE OFFICE PLACING THEM INTO OPERATION.

MR. CHAIRMAN, LAST YEAR THIS COMMITTEE DENIED ANY ADDITIONAL POSITIONS FOR THE ADMINISTRATIVE OFFICE AND SUGGESTED THAT I SHOULD REPROGRAM AVAILABLE RESOURCES AS I THOUGHT NECESSARY AND APPROPRIATE. I AM PLEASED TO INFORM THE COMMITTEE THAT LATE LAST SUMMER I REORGANIZED THE MANAGEMENT OF THE ADMINISTRATIVE OFFICE AND CREATED THE POSITION OF EXECUTIVE ASSISTANT DIRECTOR. MY PURPOSE WAS TO GAIN GREATER CONTROL OVER THE SETTING OF PRIORITIES AND THE ALLOCATING OF RESOURCES AND THROUGH THE EXECUTIVE ASSISTANT DIRECTOR TO PROVIDE TOP LEVEL DIRECTION FOR THE COURTRAN OPERATION. AS A RESULT OF THE REORGANIZATION AND IN LINE WITH THIS COMMITTEE'S RECOMMENDATIONS, I HAVE BEEN ABLE TO ABSORB, WITH CURRENT PERSONNEL, A NEW FUNCTION AS WELL AS AN INCREASE IN WORKLOAD FOR WHICH I HAD REQUESTED ADDITIONAL PERSONNEL LAST YEAR. FOR EXAMPLE, THE RAPIDLY GROWING COURT REPORTER REQUIREMENTS OF THE COURTS TOGETHER WITH NEW AND COMPLEX CONTRACTUAL PROCEDURES NECESSITATED REALLOCATING FOUR POSITIONS FOR THIS PURPOSE. I ALSO DECIDED WE COULD ASSUME THE ADDITIONAL AUTOMATED DATA PROCESSING FOR WHICH WE HAD REQUESTED SIX POSITIONS LAST YEAR. FINALLY, THE POSITION OF JUDICIAL FELLOW IN LAST YEAR'S BUDGET WAS ALSO ABSORBED, AS A TEMPORARY POSITION.

OUR CURRENT REQUEST FOR 19 NEW POSITIONS INCLUDES 6 POSITIONS FOR COURTRAN, 6 POSITIONS FOR NEW RESPONSIBILITIES AND INCREASED WORKLOAD AND A REPEAT REQUEST FOR 7 OF THE 14 POSITIONS FROM LAST YEAR.

THE 7 POSITIONS WHICH WE WERE UNABLE TO ABSORB WERE 2 PAYROLL AUDITORS, 2 DATA ENTRY CLERKS FOR BANKRUPTCY REFORM ACT REPORTS, AND 3 ACCOUNTANTS/AUDITORS FOR MANAGEMENT REVIEW. THE PAYROLL AUDITORS WERE RECOMMENDED BY THE GENERAL ACCOUNTING OFFICE (GAO) WHEN OUR NEW PAYROLL SYSTEM WAS REVIEWED BY THAT AGENCY. THE 2 DATA ENTRY CLERKS WERE NECESSARY TO HANDLE THE NEW STATISTICAL WORKLOAD CREATED BY THE REPORTING REQUIREMENTS OF THE BANKRUPTCY REFORM ACT. THE 3 ACCOUNTANTS/AUDITORS WERE NECESSARY TO UNDERTAKE AN ANNUAL FISCAL AUDIT OF ALL OF THE COURTS, A VERY DESIRABLE GOAL GIVEN THE MILLIONS OF DOLLARS HANDLED BY THE CLERKS OF COURT EACH YEAR IN COLLECTIONS, APPROPRIATED FUNDS, AND COURT REGISTRY FUNDS. IN SPITE OF THE SUCCESS WE HAD AT REPROGRAMMING RESOURCES, I AM REQUESTING THESE POSITIONS AGAIN ONLY BECAUSE WE SIMPLY HAVE NOT BEEN ABLE TO PROVIDE FOR THESE MOST IMPORTANT FUNCTIONS.

THE SIX NEW POSITIONS (OTHER THAN FOR COURTRAN) ARE REQUESTED PRINCIPALLY TO UNDERTAKE NEW RESPONSIBILITIES, NAMELY EQUAL EMPLOYMENT OPPORTUNITY (EEO), BANKRUPTCY TRUSTEE PAYMENTS, COMPUTER SYSTEMS AUDITING, AND COST/BENEFIT ANALYSIS OF SOPHISTICATED OFFICE SYSTEMS, AS WELL AS TO PROCESS THE EXCESSIVE BACKLOG OF RETIREMENT ACTIONS. THE FULL-TIME EEO OFFICER WILL REPORT DIRECTLY TO THE EXECUTIVE ASSISTANT DIRECTOR AND WILL ESTABLISH AN EEO REPORTING SYSTEM, ADVISE AND COUNSEL COURT OFFICIALS, ASSIST IN TRAINING, ANALYZE EEO DATA AND PREPARE REPORTS. BANKRUPTCY TRUSTEE PAYMENTS, HERETOFORE A RESPONSIBILITY OF THE DIS-

TRICT COURT CLERK, HAVE BEEN CENTRALIZED FOR HANDLING BY AN ACCOUNTING TECHNICIAN IN THE ADMINISTRATIVE OFFICE IN ORDER TO COMPUTERIZE THE ENTRY OF DATA RLPRESENTING OVER 12,000 SCHEDULES AND PRINTING AN AVERAGE OF 1,000 CHECKS PER MONTH. INCREASED USE OF COMPUTERS FOR FINANCIAL OPERATIONS HAS MADE MANDATORY THE EMPLOYMENT OF A COMPUTER SYSTEMS AUDITOR TO INSURE THAT THE DIFFERENT SYSTEMS PRODUCE COMPATIBLE REPORTS AND RESULTS. THE TWO MANAGEMENT ANALYSTS WILL REVIEW THE ECONOMIC BENEFIT TO THE COURTS OF WORD PROCESSORS, FACSIMILE COPIERS AND COMMUNICATION SYSTEMS BETWEEN COMPUTERS AND WORD PROCESSORS WITH THE VIEW TO LIMITING THE INSTALLATION OF THIS SOPHISTICATED AND EXPENSIVE EQUIPMENT TO THAT WHICH IS MOST APPROPRIATE TO THE COURTS' NEEDS AND WITHIN THE CONSTRAINTS OF COMPETING REQUIREMENTS. THE CLERK FOR THE RETIREMENT SECTION OF THE PERSONNEL DIVISION WILL HELP REDUCE THE RECURRING EXPENDITURES IN OVERTIME NECESSARY TO BRING RETIREMENT RECORDS UP-TO-DATE.

FINALLY, AS EXPLAINED IN DIRECTOR LEVIN'S STATEMENT, WE PROPOSE TO TRANSFER 19 COURTRAN-RELATED POSITIONS FROM THE CENTER TO THE ADMINISTRATIVE OFFICE, AND, IN ADDITION, THE ADMINISTRATIVE OFFICE IS REQUESTING SIX NEW POSITIONS FOR ITS DIVISION OF INFORMATION SYSTEMS. AS DETAILED IN OUR APPROPRIATIONS SUBMISSION, THESE SIX POSITIONS ARE NECESSARY TO PROVIDE THE ADMINISTRATIVE OFFICE WITH PERSONNEL WHO HAVE EXPERTISE IN THE COMPUTER ENVIRONMENT THAT IS BEING TRANSFERRED FROM THE CENTER, AND TO ALLOW US TO SUPPORT EXPANSION OF COURTRAN APPLICATIONS TO ADDITIONAL COURTS. WE EXPECT THAT THE CENTER WILL BE ABLE TO COMPLEMENT THESE SIX POSITIONS WITH THE TRANSFER OF SIX ADDITIONAL POSITIONS IN FISCAL YEAR 1983.

MR. CHAIRMAN, THANK YOU FOR PERMITTING ME TO SET FORTH AND EXPLAIN OUR REQUIREMENTS FOR 1982. FOR THE MOST PART, THEY REPRESENT THE TRANSFER OF FUNDS AND PERSONNEL FROM THE FEDEPAL JUDICIAL CENTER FOR THE OPERATION OF COURTRAN. THE REMAINDER OF OUR REQUEST STEMS FROM OUR EFFORTS TO IMPROVE ADMINISTRATIVE CONTROL OVER THE EXPENDITURES OF JUDICIARY RESOURCES WHILE IMPROVING THE QUALITY OF SERVICES WHICH WE PROVIDE THE COURTS.

ACTIONS TO REDUCE SPENDING

Senator WEICKER. You are requesting an additional 38 positions for the Administrative Office, 19 of which are being transferred from the Federal Judicial Center for COURTRAN. The executive branch is attempting to reduce its overall budget through various measures. Is the judicial branch contemplating the use of any of these measures to reduce budgetary requirements?

Mr. FOLEY. Senator, we have already instituted a restriction on travel insofar as that is possible. Of course, judicial travel is not under our control and there is nothing very much we can do about it, except what we have already done; namely, to urge a Judge when he has to move from one place of holding court to another place of holding court to take a minimum number of staff with him, that he leave most of his staff at the base of operations.

Administrative Office travel is required, under our regulations now, to be approved either by me or by the Executive Assistant Director. We are urging all types of economy measures that can be undertaken.

Senator WEICKER. A recent GAO report recommended that better utilization of the clerks' offices and magistrates could improve case management by the district courts. Have you reviewed this report?

Mr. FOLEY. Yes, sir; we have that under study now.

Senator WEICKER. What does that mean? How do you intend to follow up on that?

Mr. FOLEY. It very much depends on how much we agree with the GAO findings.

Senator WEICKER. Have you responded to the GAO report?

Mr. FOLEY. No, sir; we have not.

Senator WEICKER. When there is a response made to the report, I would like to have a copy of that.

[The information follows:]

LETTER FROM WILLIAM E. FOLEY

APRIL 23, 1981.

Hon. MARK O. HATFIELD,
Chairman, Senate Committee on Appropriations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the requirement of section 1176(2) of title 31, United States Code, I would like to inform you of the action which I have taken regarding the recommendations contained in the Comptroller General's report entitled,

"Better Management Can Ease Federal Civil Case Backlog." (GGD-81-2, February 24, 1981).

The report concurs with the long-standing policy of the judiciary that the key requirements for reducing court backlogs are a sound case management system and the effective utilization of available personnel. The significant progress which the courts have achieved over the last several years in increasing their productivity has largely come as a direct result of their dedication to effective management principles. Obviously, some courts have been more successful than others in their rate of disposing of cases, but the courts as a whole have made enormous strides in coping with the increasing volume and complexity of case filings.

The report contains three specific recommendations for action by the judicial conference.

First, it is suggested that the Federal Rules of Civil Procedure be amended to include specific maximum time limits for the various steps in the civil process and require each court to establish timeframes within these limits. We agree with the basic report that specific time limits be established, monitored, and enforced by the district courts. We do not agree, however, that the proposed modification of the Federal Rules of Civil Procedure is the most appropriate vehicle for accomplishing the desired result. Nevertheless, I have referred the matter to the Advisory Committee on Civil Rules of the Judicial Conference for thorough review in light of the Comptroller General's recommendation.

Second, the report asks the judicial conference to encourage the district courts to better utilize their clerks' offices in the administration of the courts, particularly for case management and docket control systems. This recommendation reflects our long-standing policy. Copies of the report will be distributed to all clerks of the district courts, and a survey of existing case management practices has been undertaken. Moreover, I have referred the matter to the Judicial Conference's Subcommittee on Judicial Improvements to explore ways in which further encouragement might be given to the courts in this area.

Third, the report has asked the judicial conference to encourage the district courts to make greater use of magistrates. Again, the report reflects what has been a long-standing judiciary policy. The conference has been very active over the last decade in encouraging the use of magistrates by the courts. It has prepared manuals, model local rules of court, sample orders, jurisdictional checklists, seminars and workshops to encourage the maximum and effective use of magistrates. I have referred this recommendation to the Judicial Conference's Committee on the Administration of the Federal Magistrates System to determine whether any additional action might be appropriate in this area.

We agree generally with the suggestions of the Comptroller General. I would like, however, to emphasize a point recognized in the Comptroller General's report that sound case management alone cannot solve the problems of mounting district court caseloads. Additional help is needed from the Congress to limit Federal jurisdiction in certain areas and to provide the courts with the judgeships and supporting personnel necessary to dispose of their caseloads effectively and expeditously.

Please let me know if I can provide any additional information or be of further service to you on this matter.

Sincerely,

WILLIAM E. FOLEY,
Director.

REPORT ARRANGEMENTS

Mr. FOLEY. The normal arrangement, Senator, is when a report comes in from GAO, on a given function, such as magistrates or jurors, the report is referred to the committee of the Judicial Conference which has cognizance of that activity. Of course, for the report on the magistrate system, we asked for the comments of the Magistrates Committee; likewise, the Jury Committee for comments on the operation of the jury system.

Senator WEICKER. There is a substantial increase requested for fees of jurors and commissioners, from $36 million in 1981 to $46,950,000 in

1982. Tell us the reasons for this large increase and also what actions are being taken by the court to improve this situation.

Mr. FOLEY. I think Mr. Garabedian is very familiar with that. If he might be allowed to, I would like him to answer that.

Mr. GARABEDIAN. Mr. Chairman, last year the Congress appropriated $9 million to cover a deficiency in fiscal year 1980 appropriations. $2.5 million of that was needed in 1980. The balance, $6.5 million, was carried forward into fiscal year 1981. So of the $10 million increase we are requesting, $6.5 million is nothing more than carryover of the previous year's deficiency.

The increase we are asking for is twofold. One, we expect an increase in the use of petit jurors as a result of the activities of new judges. Second is the result of a higher subsistence and mileage allowance that Congress recently authorized for civilian employees. So it is the increased allowances as well as a projected increase in petit jury trials.

Senator WEICKER. You are proposing to raise the grade levels of a number of judicial officers—Drug and Alcohol Treatment Specialists in the Probation Service, Senior Probation Officers, financial deputies, and jury clerks acting as jury administrators. Would you please provide us, for the record, with information regarding the number of persons who will be affected by this action, the current salary for each of these grades and the salary for the proposed grade, as well as the total cost of this proposal.

Mr. FOLEY. Yes, sir.

[The information follows:]

Position	Number	Current salary	Proposed salary	Total cost
Drug and alcohol treatment specialists and senior probation officers	350	$29,645	$32,048	$904,000
Financial deputies	95	21,831	23,236	143,000
Jury administrator deputies	95	17,948	20,467	257,000
Total				1,304,000

HEALTH BENEFITS

Senator WEICKER. I wonder if I could have a comment on the requested increase for health benefits. I have a chart indicating the increase projected in this area which I will include at this point in the record.

[The information follows:]

HEALTH BENEFITS

Appropriation	1980 base [1]	1981 increase [2] Annualization	1981 increase [2] 10 percent [4]	1982 increase [3] Annualization	1982 increase [3] 13 percent [4]
Supreme Court	$153,000		$19,000	Unknown	$37,000
Care of the buildings and grounds	18,000		2,000	Unknown	3,000
Court of Customs and Patent Appeals	21,000		2,000	$100	2,243
Court of International Trade	54,000		4,000	400	5,700
Court of Claims	64,000		5,000	1,400	6,727
Salaries of Judges	517,000	$12,000	40,000	13,000	57,000
Salaries of supporting personnel	4,200,000		315,000	105,000	459,000
Salaries and expenses of magistrates	375,000		28,000	10,000	41,000
Bankruptcy Courts	983,000		73,000	25,000	100,000
Administrative Office	204,000	5,000	16,000	5,000	22,000
Federal Judical Center	Unknown		5,000	Unknown	7,000

[1] No money was budgeted in 1980 for an increase. Actual increase was 15 percent in January 1980.

[2] Included a 10-percent increase for health benefits for 9 months of the fiscal year. Actual increase was 15 percent for period October thru December 1980 and will be 19 percent for period of January thru September 1981.

[3] Included a 10-percent increase for first 3 months of fiscal year 1982 and a 13-percent increase for remainder of the year (excluding Supreme Court). The first 3 months are short 5 and 6 percent for remaining 9 months.

[4] Other than Supreme Court.

HEALTH BENEFIT INCREASES

Senator WEICKER. There was an increase in health benefits for all of the various judicial courts and offices this past January, I see. In addition, I notice the judiciary is projecting another increase of approximately 13 percent for January 1982, amounting to $740,000 in the requested budget authority. Isn't this type of matter normally covered in the necessary supplemental which will be submitted in 1982 after we know the actual amount of new cost?

Mr. HEISING. Mr. Chairman, on review of our health benefit requirements, we think that your suggestion is an excellent one. We have found, following this review, we have actually fallen behind in keeping up with actual costs. We were trying to anticipate the inflationary cost. Each year for the last 3 years we have been a couple percentage points off. This has been very costly. We believe that the suggestion you have made is an excellent one and that we will place it in our supplemental for pay costs the next time around.

Senator WEICKER. When you prepare your budget, do you include a figure that assumes everybody is going to participate?

Mr. HEISING. No, sir.

Mr. GARABEDIAN. No, sir; if I may, we know exactly the percentage of employees who are participating. We know exactly what we are paying for health benefits insurance now. We simply project the increased rate against those costs.

Senator WEICKER. What if all of a sudden everybody decided to go ahead and participate?

Mr. GARABEDIAN. We have found, Mr. Chairman, that the percentage of employees who participate in health insurance fluctuates very little from one year to the next. Health benefits coverage has improved recently. I think one of the major carriers now provides for dental care. But there has been very little impact on us. We find again the percentage of employees that participates does not change from year to year.

Senator WEICKER. I know what you are doing. A lot of people do it. I don't think it is good budget practice. I have to be candid with you. I take a more conservative view. I am not going to insist on it because, as I say, it varies from not only department to department but also from committee to committee right here on the Hill. My own feeling is I would rather see the full amount asked for and the money turned back, if you will, if it is not used, rather than to get into a situation where all of a sudden there was a radical change and we would be caught short.

All right, gentlemen. Thank you very much.

Mr. FOLEY. Thank you.

FEDERAL JUDICIAL CENTER

STATEMENT OF A. LEO LEVIN, DIRECTOR, FEDERAL JUDICIAL CENTER

ACCOMPANIED BY:

CHARLES W. NIHAN, DEPUTY DIRECTOR
RUSSELL R. WHEELER, ASSISTANT DIRECTOR

BUDGET REQUEST

Senator WEICKER. Our next request is that of the Federal Judicial Center. The amount requested is $7,994,000, a decrease of $1,247,000 over the 1981 base. The request reflects a transfer of 19 permanent positions to the Administrative Office of the U.S. Courts, leaving 98 permanent positions in the Judicial Center.

Appearing on behalf of this request is A. Leo Levin, the Director, who is accompanied by Charles W. Nihan, the Deputy Director, and Russell R. Wheeler, the Assistant Director.

Mr. Levin, we will be pleased to take your statement in full and you may either read it or synopsize or do whatever you wish.

Mr. LEVIN. Thank you, Mr. Chairman. I will just make a few brief comments.

I am privileged to be here again appearing on behalf of the Federal Judicial Center. I think there are three factors that account for the requested reduction of $1.25 million, approximately.

First, there is no programmatic increase requested at all. This is despite the fact that there has been a substantial increase in the size of the Federal judiciary, putting substantially increased demands on us. It is the feeling of the Center, supported by the Board, that in these present times we should not attempt any programmatic increase at all, despite that increase in size.

Second, of course the key part is the transfer of elements of COURTRAN to the budget of the Administrative Office of the U.S. Courts. These include 19 positions, to which you have referred, over $2 million in budgetary authority, and a transfer of substantial equipment, including three of our four large computers.

The third factor involved is the cost-of-living increases. Now, primarily over half a million dollars of this is per diem and travel. Of course, the very nature of our assignment, bringing judges together for seminars, for example—there are over 14,000 people in the Federal judicial system today—requires us to ask for this increase. I note here particularly that other than cost-of-living, the inflationary increase, we have had no increase in the base for travel for many years.

A final note, and with this I finish, subject, of course, to your questions: The Center Board, chaired by the Chief Justice, has had a very active interest in the development of this budget. They have emphasized the need for the Center to retain a computer development ca-

bility. There are a number of programs in progress. PIMS, the Probation Information Management System, is one. We think it can be terribly important in the administration of criminal law. This proposal reflects the idea that we will retain that development capability in the computer field.

PREPARED STATEMENT

Thank you very much, Mr. Chairman. I would be pleased to respond to any questions.

Senator WEICKER. Thank you very much.

[The statement follows:]

STATEMENT OF A. LEO LEVIN

Mr. Chairman, it is a privilege to appear before you once again to present the appropriations request for the Federal Judicial Center, a request that this year includes no programmatic increases.

The highlight of this statement is a report on the results of the efforts of the Center and the Administrative Office of the U.S. Courts to fashion a plan for the transfer of appropriate elements of Courtran--the umbrella term for the automated court and case management systems the Center has developed--from the Center to the Administrative Office. These efforts are consistent with the Committee's emphasis last year on the importance of such a transfer, although our work on this matter had, of course, been underway earlier. Later, I would like to explain the proposed initial phase of the transfer, which would move nineteen positions, management of the two Courtran computer facilities, title to three of four computers and other equipment, and $2,083,000 in budgetary authority from the Center to the budgets of the U.S. Courts and of the Administrative Office. I also want to explain the rationale that underlies these proposals. The effect of this transfer, and our decision to seek no programmatic increases, is a net reduction in our proposed FY 82 budget of well over a million dollars.

I should note at the outset that this appropriations request, including its proposed Courtran transfer, has been reviewed at various stages by the Board of the Federal Judicial Center, and the Board has given its approval and endorsement. The Board consists of the Chief Justice as Chairman, the Director of the Administrative Office of the United States Courts, also serving ex officio, as well as two circuit, three district, and one bankruptcy judge, all selected, pursuant to statute, by the Judicial Conference of

the United States. The Board wanted to be certain that the transfer of Courtran responsibilities to the Administrative Office not deprive the Center of its essential research and development capability; this capability, of course, is essential if the Center is to continue to discharge the mandate of Congress as set forth in the 1967 Act that created it. Although the transfer will require some adjustments in our plans, it will not severely affect the Center's ability to test and develop additional technological services for the courts.

Overview of 1982 Request

For fiscal 1982, the Center is proposing a decrease of $1,247,000 from its fiscal 1981 appropriation. The Center's 1981 budget, including the proposed pay cost supplemental, will be $9,241,000; the Center's 1982 budget is proposed at $7,994,000. Accompanying this reduction in budgetary authority is a reduction in personnel positions from 117 permanent positions in 1981 to 98 positions in 1982.

The decision to request no programmatic increases reflects no view, on the part of the Center's Board or staff, that the Center does not have legitimate needs for such increases. To the contrary, the judges and supporting personnel of the third branch each year seek more from the Center in the form of policy research, educational programs, and automated systems development. Indeed, at a time of national concern over the decline in research and development, it bears mention that a significantly lower portion of the federal judicial budget--less than 1 percent--goes to research and development (through the Center) than is true of the overall federal budget, of which almost 6 percent is for research and development. Moreover, research, development, and continuing education programs are generally credited with

having contributed to increased productivity in the federal courts.

The Center, however, led by the Chief Justice and its Board, weighed these needs against the nation's current economic situation and determined that the Center, however small its budget, should contribute to spending restraint, even if its contribution would be as symbolic as real. Thus, the Center will do everything within its power to increase its productivity without a commensurate increase in programmatic resources. The only increases included in the budget request are for the so-called automatic adjustments to base and built-in changes, reflecting for the most part inflationary increases in travel and other services and supplies essential for the Center's ability to serve the third branch.

Adjustments to Base and Built-In Changes

Requested adjustments to base and built-in changes for 1982, excluding the costs associated with the transfer of Courtran, constitute $836,000, to cover within-grade and merit increases; increases in our contribution for employee health benefits; increases in the cost of travel; and increases in contract rates and charges for services and supplies. Almost two-thirds of the $836,000--$522,000--is to cover increases in the costs of subsistence, mileage allowances and air fares for official travel. This increase is necessary primarily because the Congress increased both the per diem and the subsistence reimbursements allowed for personnel on official travel; it reflects as well the anticipated inflation in the cost of travel.

Travel comprises a necessarily large amount of the Center's budget--almost one-third of the proposed 1982 budget--largely because attendance by judges and others at

seminars and workshops is necessary to meet the educational mission that the Congress has assigned to the Center. I should point out that despite the recent increase in the size of the federal judicial system, due to the Omnibus Judgeship Act, the Center's base budget for travel has not changed, other than for inflation costs, in a number of years. The Center will continue with every effort to structure our programs so as to restrain travel costs while maintaining the effectiveness of the programs.

Transfer of Courtran

The record of the Center's appropriations hearings a year ago reveals extensive discussion of the need to find the best means of transferring responsibility for Center-developed computer applications to the Administrative Office of the U.S. Courts for their regular operation. At that time, Director Foley and I were able to report to the Subcommittee that we had established an AO-FJC Joint Development Planning Committee charged with the task of reviewing all available options for achieving transfer of such applications and developing a plan to implement transfer from time to time as appropriate.

The work of that committee had progressed sufficiently so that in discussion last year, I was able to indicate to the Subcommittee that the Center and the Administrative Office anticipated transferring from the Center budget to the 1982 budget of the U.S. Courts certain costs for communications, responsibility for the further purchase and maintenance of computer terminals and for further purchase and maintenance of certain micrographic equipment, and for supplies required by the courts to use the Courtran applications that the Center had installed in their offices. As promised, this budget request for fiscal 1982 contains this transfer of $570,000 in

budgetary responsibility from the Center's budget to the appropriation "Expenses of Operation and Maintenance of the Courts."

The Joint Development Planning Committee has met regularly since last year's appropriation hearings. These deliberations have led to the conclusion that a more extensive transfer can be achieved in fiscal 1982 than had been anticipated a year ago. Consequently we propose to transfer not merely the $570,000 to the U.S. Courts budget mentioned above. We also propose another permanent budgetary transfer of some $1,513,000 from the Center's budget to that of the Administrative Office of the U.S. Courts. This will transfer from the Center to the Administrative Office: (a) nineteen positions and related travel and transportation costs, (b) contract services both for computer software and supplies, (c) three of the four computers acquired by the Center for Courtran development, (d) management responsibility for the two Courtran computer facilities, (e) approximately 267 computer terminals and eighty-four printers, and (f) the transfer of appropriate costs for computer maintenance.

The net effect of this proposal would be: (1) the transfer of those costs associated with district and appellate court use of various Courtran applications, and (2) the transfer of those costs and personnel now within the Center that provide direct support to courts making day-to-day use of various Courtran applications. The tasks associated with operating the systems and providing daily computer support to the courts, in other words, are being transferred to the Administrative Office, because they are tasks within the mission of that agency. The tasks of designing, developing, or evaluating new systems or technologies are responsibilities of the Judicial Center and resources for these tasks will remain in the Center.

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I am authorized to state that this proposal has the approval of both the Center's Board and Director Foley, for the Administrative Office. It has as well as the authorization of the Judicial Conference of the United States, which is responsible for the appropriations to which the transfer will be made.

We believe that, following this transfer, sufficient computer equipment and personnel will remain in the Judicial Center to allow us to effectively meet our current research and development responsibilities. These responsibilities include, for example, the Civil Caseflow Management System and the Probation Information Management System (PIMS), two development tasks that the Center's Board has officially endorsed. This is not to say the resources remaining with the Center would be sufficient to allow the development of other systems that might be assigned in the future, or to support large scale implementation of systems such as PIMS should they prove effective.

As we have explained to the Committee on earlier occasions, development of a complex computer application, such as the Criminal Caseflow Management System, is a necessarily long and involved process, and it may be necessary to manage the project in a development status long after it has, from the perspective of the users, become operational. The Criminal System and the Central Violations Bureau System, for example, and four others, have been in that situation for the past several years. Some Center personnel have been providing day-to-day operational support to maintain the systems while refinements in software are undertaken to increase their efficiency. We have concluded, not that these systems can benefit from no further developmental work at all, but that they will soon reach the point at which they can be declared operational and thus should be transfered to the judicial

agency responsible for providing operational support to the courts, and we propose to do this in Fiscal Year 1983. During Fiscal Year 1982, the six persons responsible for these applications will stay at the Center to continue refinement and development. For Fiscal Year 1983, we propose to transfer these positions, along with responsibility for the applications, to the Administrative Office.

The Congress is asked at this time to approve the transfer of computer equipment and nineteen support positions, which will enable the Administrative Office to assume responsibility for the operational support of the systems. I should note that the Administrative Office's request for additional computer-related positions in 1982 (which positions will be complemented by the transfer of the six additional Center positions described above) is crucial to the successful transfer of software applications.

At this time, the transfer will involve no physical movement of either persons or computer equipment. Indeed, the long-range plans for any space reallocation for the Center and the Administrative Office has as a primary objective placing all Administrative Office and Center computer equipment and personnel in one site. Furthermore, keeping the four computers and the personnel who use them in the same location will allow us to avoid dismantling the current integrated computer configuration that the Center has constructed. Last year I noted, in response to committee questions, that to dismantle the existing four computers' integrated configuration would result in higher operating costs due to loss of economies of scale as well as the loss of redundancy and back-up capability. These losses would impair the quality of the service made available to the federal courts. By transferring operational responsibility for three of the four computers, but continuing to maintain them at the same site, we will be

able to avoid this negative impact, while still complying with the Committee's directive that Courtran transfer proceed.

It was also noted, in response to questions last year, that the Center would need to retain at least two of the four computers it had acquired in support of the Courtran application; I said then that one computer would be necessary for research and development and the second to support training needs and pilot systems being tested by the federal courts. Our decision to retain the Center's title to only one of these computers reflects, in essence, our commitment to meeting the strong and firmly-held wishes of the subcommittee that the transfer should proceed as rapidly as possible. Consequently, while arguments might be made for the Center to retain title to two computers, doing so would have delayed the transfer of Courtran to the Administrative Office, and consequently this submission is based on our taking the larger step. We are grateful for the support of Courtran by the Congress and, with that continued support we shall undertake to do whatever is necessary to be certain that the Center's research and development mission is indeed protected.

Conclusion

I should be pleased, of course, to respond to any questions that you may have about any aspect of the Center's operation, the Center's appropriation request for fiscal 1982 or the Courtran transfer proposed in our appropriations submission.

Thank you.

COURTRAN

Senator WEICKER. The subcommittee has strongly supported the transfer of responsibility for operational COURTRAN applications to the Administrative Office, and we are pleased this transfer has begun.

What steps have been taken to solve the problem you raised last year that a transfer of Center hardware to the Administrative Office would

create a serious shortfall in the Center's developmental capability and a loss of a back-up capability to support the courts?

Mr. LEVIN. There are two things, sir. First, we propose that all of the equipment remain physically together. This will allow for the efficiency that we spoke of last year.

Second, by retaining the positions that we have retained and retaining the equipment that we are retaining, and really by some very stringent efficiency measures, we think we will be successful in retaining that capability.

Senator WEICKER. Are the 19 computer operations staff positions to be transferred to the Administrative Office in fiscal year 1982 sufficient to operate and maintain the computers?

Mr. LEVIN. In one sense I think the answer is yes. On the other hand, this envisions some additional support for the Administrative Office, partly because it is expanding. That seems to us to be a costly factor. One court alone told us by automating the Central Violations Bureau, in 6 months they increased the number of fines taken in by $200,000. That is in the face of an average cost per court—if all courts were to automate CVB—of $3,500 to $4,500 a year. So this is the way we hope to do that.

Senator WEICKER. The Administrative Office is requesting six programmer analyst positions in fiscal year 1982 who will be trained to maintain the COURTRAN systems. An additional six programmer analysts are to be transferred in fiscal year 1983 from the Center. How will the COURTRAN systems be maintained until these persons are trained? Why aren't you transferring the additional six persons this year so immediate support is available?

Mr. LEVIN. I would like, if I may, to have Mr. Nihan respond directly to that.

Mr. NIHAN. I would be pleased to, Senator. The software will be maintained within the Judicial Center until such time as the Administrative Office has six additional people on their staff. The reason they are getting six additional is that while the personnel being transferred by the Center are indeed sufficient to maintain the system in the number of courts in which it is now being used, the Administrative Office, now that we have cost-effectiveness studies that show indeed COURT RAN is cost effective, will be expanding it to other courts. So the hope is in 1982 the six people acquired by the Administrative Office will gain sufficient skills in the computer and program languages utilized by the Judicial Center that before the applications become effective in 1983 there will indeed be sufficient staff to maintain and expand.

Senator WEICKER. Would you provide the committee with a list of research projects currently underway and a description of each, please?

Mr. NIHAN. Yes.

[The information follows:]

THE FEDERAL JUDICIAL CENTER

March, 1981

Below is a list of major projects that the Center's Research Division is currently conducting or has recently completed, with a brief description of each project and an indication, where appropriate, of the source of the request for the research. Most of the Center's research is undertaken in response to requests from Judicial Conference committees, individual courts, and, less frequently, external agencies; typically, the Center is asked to gather and analyze information that will illumine judicial administration policy issues under consideration by the requesting committee or other body.

The projects are arranged below under general subject headings: (a) trial court research, (b) sentencing and probation research, (c) research in corrections and prisoner litigation, (d) jury research, (e) appellate court research, and (f) research in general court operations. Forty-five projects are listed below. In some cases, more than one project is included under a single heading; for example, two projects on attorneys' fees are listed under item 4 of Section A, Trial Court Research. The Center's Research Division also provides, on a continuing basis, advice and assistance to the committees of the Judicial Conference and to individual courts and judges. Members of the staff also respond to numerous short-term inquiries from individual courts, as well as from personnel in the Administrative Office of the United States Courts and other organizations. There is no effort below to categorize and list these activities, although they often stem from specific projects such as those listed below.

A. TRIAL COURT RESEARCH

1. Court-Annexed Arbitration: At the request of the Department of Justice and in cooperation with the participating courts, the Center has recently evaluated the operation of three district courts' local rules providing for court-annexed, non-binding, mandatory arbitration in certain classes of civil cases. Such arbitration has been successful as an alternative to litigation in several state courts, and the Department sought the Center's evaluation as a prelude to possible legislation authorizing arbitration on a broader scale in federal courts.

2. Summary Jury Trials: At the invitation of a judge in the Northern District of Ohio, the Center is observing and evaluating the effects of a procedure instituted by local rule for a "summary jury trial." Specifically, in certain cases that otherwise appear destined to go to trial, the judge provides counsel a jury to which they may present summary arguments, in order to give a sense of how a real jury might react were the case to go to trial. The procedure may provide counsel a more accurate basis for comparing the advantages of settlement and the costs of a trial.

3. Use of Juries in Complex and Protracted Cases: The Center has been asked by a Judicial Conference subcommittee to undertake a number of related projects to explore the matter of juries' hearing and deciding complex and protracted cases. The projects include background research on the history and role of "blue ribbon" jury panels, analyses of current studies of group problem solving that may help explain jury operations as well as intensive examination of specific examples of protracted litigation, including interviews with the judges, lawyers, and jurors.

4. Attorneys' Fees: The Center has commissioned two reports on the awarding of attorneys' fees in federal courts.

They describe the law and practice governing the award of fees, in order to provide practical reference assistance to judges faced with such decisions. One, recently published, analyzes the award of such fees in class action cases. A second report, soon to be published, analyzes statutes, decisions, and other rules that regulate or control the awarding or setting of attorneys' fees generally.

5. Sanctions: There is considerable interest in the extent to which abuse of federal civil litigation procedures can be curtailed by more vigorous use of sanctions. The Center will soon publish a report that catalogs and analyzes the sanctions available to United States courts when parties fail to comply with the Federal Rules of Civil Procedure.

6. High Volume Discovery: The Center continues its research on civil litigation, in light of the widespread concern that litigation procedures are too expensive and delayed. An outgrowth of the three reports in the Center's District Court Studies Project series is a study currently underway to analyze a set of cases (in a single district) that evidence a high volume of discovery incidents. The purpose is to understand the circumstances in which high volume discovery occurs, and to identify its impact.

7. Local Rules: At the request of the Judicial Conference Advisory Committee on Civil Rules, the Center has assessed the operation of several districts' local rules that are being considered by bench and/or bar for national adoption. Those rules deal with pretrial conferences, lawyers' post-trial interviews with jurors, and communications among members of the class in a class action suit.

8. Multidistrict Litigation: The Center is working with the Board of Editors of the Manual for Complex Litigation to revise and update the Manual. The Center will also develop a

report assessing afresh what such a manual for complex litigation should contain.

9. Case Weights: At the request of the Judicial Conference Subcommittee on Judicial Statistics, the Center undertook a data collection effort and analysis to update the district court "case weights," a relative measure of the judge time typically consumed by various types of cases. Case weights provide a more accurate description (than a simple count of filings) of the demands imposed on different courts by the specific mix of cases filed with them, and thus aid in assessing the need for new judgeships. A similar project is now underway for bankruptcy courts.

10. Legislative History of the Speedy Trial Act: The Center recently published a legislative history of Title I of the Speedy Trial Act of 1974, as amended, to provide reference assistance to judges called upon to interpret it in litigation. The 1974 Act includes a mandate to the Center to "advise and consult with the planning groups and district courts in connection with their duties" under the Act (18 U.S.C. § 3169). The legislative history contains extensive references to the floor debates, committee reports, and hearings on the several provisions of the Act; it also includes a narrative description of the legislation's evolution in the Congress.

B. SENTENCING AND PROBATION RESEARCH

1. Probation Case Load Classification: At the request of the Judicial Conference Committee on the Administration of the Probation System, the Center has developed a "base expectancy," or "risk prediction," scale for use in classifying federal probationers according to the level of supervision they are likely to require. Among other things, this allows for more effective planning for the deployment of probation

officer services. A manual to facilitate use of the scale has been prepared and a training program to assist in implementing its use is currently being tested.

2. Presentence Report Disclosure: Also in response to the Probation Committee, the Center analyzed the operation of Federal Rule of Criminal Procedure 32(c)(3), which controls the disclosure to the defendant and his counsel of the probation officer's presentence report. The rule had recently been revised to provide greater defendant access, and the Committee thought there was need for analysis and suggestions to guide its implementation. The report based on the study was published in the Harvard Law Review with reprints distributed widely among federal court personnel.

3. Sentencing Councils: Sentencing councils are a device by which a district judge can discuss his or her sentencing intentions with the other judges of the court. The object is to reduce unwarranted disparity in sentences handed down by the various judges. The practical effect of a council, however, depends on its structure and procedures. To identify the best structure and procedures, the Center analyzed the operation of councils in three districts, studying sentences imposed in the period before and after the adoption of the procedures. A paper, summarizing the results and recommending specific council structure and procedures, will soon be published.

4. Practical Effect of Sentences Imposed: The actual sentence that a convicted defendant serves is affected, not only by the sentence the judge imposes, but also by the policies of the United States Parole Commission and the Bureau of Prisons. The Center has prepared a report describing these agencies' policies for the judges, so that they may be aware of the effect of these policies on the defendants they sentence. The report is updated periodically, to reflect any

changes in Parole Commission and/or Bureau of Prisons policies. It is provided to judges at the Sentencing Institutes convened under authority of 28 U.S.C. § 334 and at the Center's Seminars for Newly Appointed District Judges. (Also, the Probation Division of the Administrative Office provides the report to the United States Probation Offices, and United States Attorneys Offices receive it through the Department of Justice.)

5. Probation Information Management System: The Judicial Conference of the United States has authorized the development of a multi-purpose Probation Information Management System. The system will include nationwide data on sentences imposed, which can be consulted by judges in the interest of avoiding unwarranted disparity, as well as management information on the probation system to facilitate budgeting, planning, and management control. The Center is working with the Probation Committee of the Judicial Conference and the Probation Division of the Administrative Office in the design of this system. In related activity, the Center is providing support to the federal probation office in the District of Columbia in refining an automated system for the management of individual probation offices.

6. Drug Treatment Program: In 1979, Congress transferred from the Department of Justice to the Probation Division of the Administrative Office, the responsibility for managing aftercare treatment for drug-addicted probationers. At the Division's request, the Center is providing support for the required evaluation of that program.

7. Sentencing Data: A district judge with almost twenty years on the bench has asked the Center's help in analyzing the sentences he has imposed, in order to learn more of the actual effect the sentences have had. The Center is helping him analyze the sentences in light of the subsequent criminal

history, if any, of the individuals sentenced. This information may also serve to inform other judges of the practical effect of their sentences.

C. RESEARCH IN CORRECTIONS AND PRISONER LITIGATION

1. Prisoner Civil Rights Litigation: Federal district judges constantly seek practical advice on techniques for managing the mass of litigation filed by prisoners asserting violations of their civil rights. Most of the litigation is generally acknowledged to be frivolous, but it is imperative that the judge be able to identify the relatively infrequent meritorious claims among the many petitions filed. The Research Division has worked closely with a Center committee of judges to develop a set of recommendations to help the judiciary handle the large volume of cases filed by prisoners, particularly those incarcerated in state institutions. The committee's Recommended Procedures for Handling Prisoner Civil Rights Cases contains practical guidance and has been widely distributed to federal and state judges. Support is now being provided to a Judicial Conference committee that is proceeding from the base prepared by the earlier research. Procedural recommendations as well as suggestions for legislation will be developed.

2. Implementation of Court-Ordered Decrees in Extended Impact Cases: The 1970s saw a dramatic increase in the instances in which courts have found it necessary to issue orders for large scale and systematic changes in institutions such as prisons and mental hospitals, in order to correct constitutional violations. Special masters have often been appointed to oversee the implementation of the orders in these cases. A judge who had such a case invited the Center to observe the work of the special master he appointed, not only to document the experience, but also to develop suggestions

for judges and masters in similar cases. A report is being prepared that will serve as a resource and a guide to both judges and masters when faced with this type of extended impact litigation; the report on the specific case mentioned above, however, will not be published until the case is completed and the court relinquishes jurisdiction.

D. JURY RESEARCH

1. Voir Dire: At the request of the Judicial Conference Committee on the Operation of the Jury System, the Center has been studying current voir dire activity; in federal court, the judge conducts the bulk of the questioning of prospective jurors. The project, for which actual voir dires were analyzed, was summarized in a report that also included suggestions for the development of a judicial training program on the conduct of voir dire. The Center is now building on this work by developing a manual for judges on conducting voir dire and managing juror challenge activity. The manual will describe the several commonly used challenge systems and voir dire examination methods, and will supplement this material with some of the Center's prior interdisciplinary research on voir dire.

2. Juror Utilization: The Center has also undertaken, again for the Jury Committee, a variety of projects to analyze current juror utilization methods, in order to help the courts ensure representative juries. The Center developed a computer program to analyze the data on jury pool composition that court personnel provide to the Administrative Office. The program produced reports for the various courts, comparing each court's jury pool with the demographic makeup of the general population in the district. The Center has developed a manual to facilitate the program's use and transferred its operation to the Administrative Office.

The Center has recently completed an effort to assist courts in the administrative steps of summoning jurors. The analysis was based on experiments in eight districts to test the effectiveness and economy of different summoning methods. The project compared the use of ordinary mail with certified mail, as well as differing procedures to include the juror questionnaire with the summons or to send the summons alone. The Center's report on the project describes the results of the experiments and identifies certain statutory changes that may be necessary to implement the indicated improvements.

3. Jury Instructions: The Research Division, in support of a Center committee of judges, is working to develop pattern jury instructions that will be legally correct and still comprehensible to the layman juror. Interdisciplinary research on language comprehension has been used in this effort. The project was commenced in anticipation that passage of comprehensive criminal code revision would require major revisions in jury instructions, but the work to date has involved instructions not dependent on that revision.

E. APPELLATE COURT RESEARCH

1. Appeals Expediting: The Eighth Circuit Court of Appeals developed a system to expedite the flow of criminal cases from the filing of the notice of appeal, through the forwarding of briefs and the scheduling or arguments. An "appeals expediter" is responsible for closely monitoring the appeals at every step. At the court's request, the Center undertook to document the program the court had developed and to suggest any refinements. The project objectives were both to assist the Eighth Circuit and to make knowledge of the procedure available to other courts. Once the project began, the Center responded to a request from the Tenth Circuit Court of Appeals for assistance in developing a similar procedure.

In the Tenth Circuit, a computer simulation has been designed that will enable court personnel to test the potential impact of changes in the court's rules and procedures.

2. Preargument Case Expediting Programs: The Center continues to evaluate the Second Circuit Court of Appeals' use of a preargument conference at which the parties review the case with a settlement attorney; the technique is seen as a means of identifying appeals that can be settled prior to oral argument. A Seventh Circuit project has developed from the Second Circuit's efforts. In the Seventh Circuit, the Center is completing its evaluation of the court's use of various types of detailed scheduling letters prior to the actual convening of predocketing conferences. The procedures' impact on settlement and expedition is being studied.

3. Appeals Without Briefs: The Center is providing support and evaluation to the Ninth Circuit in its test of a procedure to dispose of certain types of appeals on the basis of oral argument before the panel. No briefs are prepared or submitted. The court wishes to learn whether the hoped-for increase in disposition speed is being achieved, and if there are any unanticipated side effects.

4. Computer Calendaring System: The Center's Research Division developed a computer program for the Ninth Circuit that automatically assigns cases to panels, employing the court's various criteria as to the cases' difficulty, subject matter, and district from which the appeal was taken. CALEN-9, as the system is called, achieves major administrative economies while preserving the court's own policies on calendaring. Refining the system is an ongoing effort, as are discussions with other circuits to provide similar systems designed to meet their individual criteria.

5. Ninth Circuit Innovations Project: Stemming in part from its other work for the Court, the Center was recently

asked by the Ninth Circuit to propose a series of administrative and case management innovations that might help resolve the particular problems faced by that circuit, which, after October 1, will be far larger in size than any other circuit. The Center has submitted a roster of suggestions, based on extensive interviews with judges and other personnel, to the court for its consideration.

6. Opinion Publication: A project has been completed recently that examines the various circuits' practices and policies as to the selective publication of panel opinions. The great increase in appellate filings has forced every court to consider which opinions should be published and which opinions are better left unpublished because they make no contribution to the body of the law.

7. Administrative Responsibilities of the Chief Judges of Courts of Appeals: The Conference of Chief Judges (i.e., the chief judges of the federal courts of appeals and the national appellate courts) has asked the Center to undertake survey research to identify and categorize the various administrative responsibilities of the appellate Chief Judges. The goal of the project is to document for all chief judges the administrative techniques found useful by their colleagues, and to assess whether the administrative duties now being performed are being performed in the optimal way possible. The project will assess what duties can and should be delegated. (The Conference requested this research partially on the basis of the utility to district chief judges of a similar project that the Center undertook in 1980 at the request of the Conference of Metropolitan District Chief Judges.)

F. RESEARCH IN GENERAL COURT OPERATIONS

1. Adequacy of Advocacy: Support is being provided to the Judicial Conference committee charged with responsibility for implementing a set of proposals to improve the quality of advocacy in federal courts, thus improving service to litigants and expediting the conduct of trials. The proposals include possible experience requirements for admission to federal practice, examinations in federal practice subjects, and a method of peer review. The Center is observing the activities in fourteen courts serving as pilot courts for the committee.

2. Experimentation in the Law: In 1978, the Chief Justice, as Chairman of the Center's Board, appointed a special Center committee of judges, law professors, practicing attorneys, and social scientists to explore the ethical tensions inherent in the use of controlled experimentation in legal settings. Several judges had requested such an examination after they had faced the difficult decision of whether to allow the use of a controlled experiment in assessing the utility of proposed judicial administration improvements in their courts. The committee has met several times during the year and has worked through subcommittees to fashion a report that will be of significant value to judges and other court personnel, as well as researchers.

3. Analysis of Federal Court Rule Making: Throughout the 1970s, there has been considerable interest on the part of the Congress, the judiciary, and the bar as to whether the current procedures for federal court rule making are the best possible method for the development and analysis of federal rules of procedure and evidence. In response to the Chief Justice's 1979 call for a thorough review of the process, the Center has completed a report that describes current rule making and analyzes perceived weaknesses and strengths in the

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current process. Proposals for change have been developed. This work is being coordinated with the Judicial Conference Rules Committees.

4. Creation of Judgeships: The current method of federal judgeship creation has tended, in recent decades, to produce new judgeships in large numbers and only after long intervals, with attendant logistical and orientation problems. The Center has completed a modest analysis of the judgeship creation methods used by the various states, so that information on possible federal adaptations of these state procedures will be available should policy makers wish it.

5. Customs Court Research: The Center, in response to a 1979 request of the Senate Judiciary Subcommittee on Improvements in Judicial Machinery, analyzed a small claims procedure for the United States Customs Court that had been proposed by various parties that had been active in the legislative consideration of the Customs Court Bill of 1979. That bill, since enacted, has expanded the court's jurisdiction and renamed it the United States Court of International Trade. The report was submitted at the request of the subcommittee to help it evaluate the various arguments.

6. Peremptory Challenge Research: At the request of the Judicial Conference Advisory Committee on Criminal Rules, the Center analyzed current legislative proposals that would allow a federal litigant a peremptory transfer of his or her case to another judge. The Center's report assesses various state experiences with such rules, and analyzes the possible effects of such a rule in the particular context of the federal courts. The report will thus make information available to policy makers within and without the judiciary in evaluating the legislative proposals.

7. Judicial Data Books: An effort is underway to prepare a book of demographic data, organized by judicial district and circuit, similar in content to the Congressional Data Book, but constructed with variables useful for analyzing federal judicial administration. The objective is to take advantage of data analysis currently underway for the 1980 census to produce a research tool of value to the courts and to others responsible for judicial administration policy making.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I have some additional questions that I would like to submit for your response in the record.

Mr. NIHAN. We will be glad to answer the questions.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

COURT OF CLAIMS

Question: Based on the justifications for the Court of Claims, I see that the last time your printing contract expired in January 1980, GPO negotiated one which resulted in an 88 percent cost increase -- from $100,000 to $188,000 per year. This contract expires in January 1982 and you are projecting an increase cost of only $25,000. With this prior history, is this estimate optimistic? Are there any discussions on-going with GPO to insure costs can be kept down?

Answer: We hope so. Our total requested increase for this item, including the application of the inflationary factor, is $39,000. This provides for a budgeted figure of $191,000 for printing for fiscal year 1982. As to on-going discussions with GPO concerning costs, we have none at present, since we have a contract which runs through January 1982. Of course, cost factors will be discussed when the time comes to prepare the solicitation for the next contract. As to the present contract, and the unexpected 88 percent increase, we did question GPO on the matter. Their response was as follows: "Prior to making award, all available material and labor statistics were taken into consideration including the Government Printing Office Scale of Prices which compared favorably with the bid in question. Based on these facts, the award was made."

Question: Last year the Committee denied funding for four requested positions -- three secretarial and one library assistant. We recommended in doing so, that the Court consider shifting positions if these were needed. I see that you are renewing your request for a library technician. Is it not possible to meet this need within existing resources?

Answer: We looked at it, and we felt that we could not reassign someone from one of those positions with the duties they were performing, to the library technician's post.

SALARIES OF SUPPORTING PERSONNEL

Question: Last year we denied a request for 175 additional deputy clerks for the district courts and recommended that consideration be given to reprogramming positions from the Probation Service. This year you are requesting 51 deputy clerks and $885,000 for the appeals courts and 134 positions and $2,238,000 for the district courts. Can any portion of this need be met by reprogramming?

Answer: Based on projected caseload and filings, these additional deputy clerk positions cannot be absorbed through reprogramming. As we previously indicated, work measurement studies are being conducted with respect to the clerks' and probation offices to validate the current workload ratios. If the studies indicate that the reprogramming of resources is possible, this Committee will be advised.

Question: You are requesting 36 additional positions for the National Court Library system. Could you tell us what criteria you use for establishing a new satellite library?

Answer: It has been our experience that when a circuit judge and three or four district judges are located in a particular city, they take the initiative to find suitable space in the courthouse to house lawbooks from their chambers book collections. This action enables all court personnel to have access to the library and eliminates the necessity of providing the chambers libraries with anything but the basic, most used, legal reference material. We would propose to continue these basic criteria of: great interest by four or five judges in one location; adequate space available in the courthouse for a library; and a willingness by the judges to transfer books from their chambers to become the core collection of the new library, so that new purchases of needed lawbooks would not duplicate items already available in the courthouse. Until planned work measurement studies can be undertaken to analyze the court library program, this formula will continue to be used. This is cost effective because it reduces the size of chambers libraries.

Question: Given the current level of judgeships, do you anticipate there will be a requirement to open still additional libraries?

Answer: The judges in the following cities have indicated an interest in establishing a court library:

Columbus, Ohio
Grand Rapids, Michigan
Salt Lake City, Utah
Albuquerque, New Mexico
Birmingham, Alabama

However, preliminary planning and surveys of need have not yet been undertaken by the Administrative Office.

DEFENDER SERVICES

Question: The budget justification indicates an actual decline in the number of cases received by Community Defender organizations between fiscal year 1980 and fiscal year 1982. During this same period, the costs per case have risen from $486 to $598 - 23 percent. To what is this increase attributed?

Answer: Most of the increased costs associated with Community Defender organization operations, between fiscal year 1980 and fiscal year 1982, are attributable to annual cost of living salary adjustments comparable to those granted to Federal employees.

The average time in court per trial from fiscal year 1978 to fiscal year 1980, has increased by 49 percent. These statistics are consistent with reports that, with the low rates of compensation for private attorneys under the Criminal Justice Act, Federal Defender organizations are being called upon increasingly to handle the more extended and complex cases being filed by United States Attorneys.

The decline in caseload for Community Defender organizations between fiscal year 1980 and fiscal year 1982 is less than 1 percent, and due to the increase in extended and complex cases assigned to Federal Defenders, it is necessary to maintain the existing staffing levels.

Question: The justification does indicate a lower estimate for cases represented by private panel attorneys - $530 per case anticipated this year. Has any consideration been given to increasing the number of cases going to private panel attorneys?

Answer: The projected average cost per case for private panel attorneys for fiscal year 1982, is $546 -- $530 for compensation and reimbursement to attorneys, and $16 for investigative, expert, and other services pursuant to subsection (e) of the Criminal Justice Act. The projected average cost per case for the seven Community Defender organizations for fiscal year 1982, is $598, which includes all defense services provided under the Act.

In fiscal year 1980, five of the seven Community Defender organizations had an average cost per case that was less than the average for private panel attorneys in their respective districts, and costs for the other two exceeded panel attorney costs by only 10 - 12 percent. Thus, the costs associated with Community Defender organizations compare favorably with those of private panel attorneys even though the latter are still being compensated at statutory rates that have not been increased since 1971.

As the disparity grows between lawyers' regular rates and the limited rate of compensation provided under the Criminal Justice Act, more and more of the financial burden of providing necessary representation is unfairly shifted from the Government to private counsel. Increasing reliance on private panel attorneys heightens this unfairness. With increasing frequency, the Administrative Office is receiving reports from courts of difficulty in obtaining competent, experienced private attorneys willing to accept appointments under the Criminal Justice Act in extended and complex cases. An attempt to shift more appointments to private panel attorneys in this type of case makes it still more difficult to properly fill this need.

Question: Can you tell us why you are projecting a 14 percent increase in costs for Defender Services relative to a 2 percent increase in caseload estimated for 1982?

Answer: The "budget authority" figures contained on page 8.3 of the Judiciary budget estimates for 1982 reflect an authority for fiscal year 1981 of $24,000,000, and an authority for fiscal year 1982 of $27,320,000, an increase of 14 percent. However, the projected obligations (cost of providing Defense Services) for 1981 are $27,926,000, and for 1982 are $29,320,000, an actual increase of only 5 percent. The reason for the difference between the "projected obligations" and "budget authority" is the "carry forward", of $3,926,000

from fiscal year 1980 into fiscal year 1981, which serves to offset the anticipated obligations, and reduce the budget authority for fiscal year 1981.

SALARIES AND EXPENSES OF MAGISTRATES

Question: Can magistrates' clerical positions be assigned to the district courts or the bankruptcy courts to relieve burdens there?

Answer: It is contemplated that clerical positions will be transferred from magistrates' offices to clerks' offices in the district courts as clerical functions are transferred. This will not, however, relieve the clerks' offices in that they would assume the clerical responsibilities transferred with the positions. There are no plans to transfer personnel from the magistrates' offices to the bankruptcy courts.

BANKRUPTCY COURTS, SALARIES AND EXPENSES

Question: If we can assume that the number of bankruptcy cases filed may be directly related to our national economic condition which we hope is improving, can this need be filled by additional temporary employees?

Answer: There would be no objection to making 25 percent (150) of the 634 deputy clerk positions requested temporary indefinite positions which could be more readily eliminated if conditions warranted it. The number should not, however, exceed 25 percent of the total and should be authorized as temporary indefinite.

The workload of the office of the bankruptcy clerk is not directly related to new case filings alone. When there has been a substantial increase in filings, it may take several years to return to a normal pending workload. This was the experience in 1975. The greater the increase, the greater the time to return to normal during which personnel cannot be reduced. Between 1965 and 1975, there was a two-year cycle for bankruptcy filings; increases for two years and decreases for two years. Following an all time high in 1975, there was a three-year decrease. Since October 1979, after implementation of the new Bankruptcy Act, filings have increased to unforeseen highs. The filing rate shows no signs of declining. It would thus be inappropriate to make more than 25 percent of the personnel requested temporary.

The individual hired on a temporary basis rarely has the capability of a permanent employee. Making the positions temporary indefinite rather than for a specific time helps somewhat. The basic staff, however, should be permanent employees to maintain a degree of efficiency which is cost effective.

Question: Under the new law, spouses can file a joint petition as opposed to single petitions under the former statute. Does this make it easier to handle cases? What percentage of filings are joint?

Answer: There are probably some slight clerical advantages to the court but the principal beneficiaries are the spouses who pay only one filing fee, rather than two as required under the former statute, and in some instances may realize some savings in attorneys' fees. A husband and wife still have separate estates, may have different debts, and may claim different exemptions.

Approximately one third of all filings under the new bankruptcy code are joint petitions by husbands and wives.

SPACE AND FACILITIES

Question: Would you please submit for the record a statement indicating the locations that you propose to close as a result of the space survey you conducted last year?

Answer: A list of the locations recommended for closure follows.

Space Recommended For Closure
Space Survey 1980

District	City/Function	Sq. Ft.	Cost Sq. Ft.	Total Dollars	Type of Space
Ala N	Tuscaloosa-Magistrate	417	$ 7.07	$ 2,948	Courtroom
Alaska	Fairbanks-District	1,500	25.82	38,730	Conference Room
Fla N	Gainesville-Magistrate	860	6.81	5,857	Courtroom, Chambers
Idaho	Moscow-Probation	440	6.66	2,930	Office
Idaho	Pocatello-Probation	304	7.41	2,253	Office
Ill N	Rockford-Probation	958	11.00	10,538	Probation, Storage, Court Reporter, Attorney Consultation Room
Iowa S	Council Bluffs-District	553	6.51	3,600	Grand Jury Room, Office
Iowa S	Davenport-District	190	6.75	1,283	Court Reporter Office
Ky W	Louisville-District	1,063	7.17	7,622	Petit Jury Room
Minn	Fergus Falls-District	2,184	5.61	12,252	Office
Minn	Fergus Falls-District	95	9.59	911	Lab and Clinic
Minn	Fergus Falls-District	1,781	7.73	13,767	Courtroom
Miss N	Clarksdale-District	1,302	8.31	10,820	Court Reporter Room, Grand Jury Room, Office
Miss S	Meridian-District	650	4.90	3,185	Grand Jury Room
Miss S	Vicksburg-District	2,046	6.31	12,910	Courtroom, Jury Room, Chambers, Clerk Space
Montana	Butte-District	510	6.06	3,091	Petit Jury Room
Nebraska	North Platte-Bankruptcy	595	7.21	4,290	Courtroom
Nebraska	North Platte-Bankruptcy	245	6.42	1,573	Office
Nebraska	North Platte-District	1,100	6.42	7,062	Offices
NY N	Plattsburg-Bankruptcy	399	7.75	3,092	Entire Facility
Okla E	Ada-District	1,024	5.72	5,857	Witness Room
Okla E	Ardmore-District	1,195	6.02	7,194	Office
Okla W	Enid-District	2,795	5.46	15,261	Courtroom, Chambers, Reception Room, Jury Room, Office
	TOTAL	22,206		$177,026	

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Question: The Management Review Division is required to review and evaluate activities in all the courts. How often does this Division visit each court and approximately how long does each visit take?

Answer: To complete its first round of reviews of all district, circuit, and national courts, the division took five years, from August 1975 to December 1980.

It is hoped that the review cycle will be reduced to three years with the second round of visits. Additionally, certain courts receive special audits of financial operations outside of the normal review cycle (e.g., when a new clerk of court is appointed).

Individual reviews last from one to three weeks, depending on the size of the court and the number of personnel committed to the review.

Question: Is this group concerned with only the financial aspects of court operations or does it perform program evaluations?

Answer: Financial operations of each court office are reviewed. Additionally, the Management Review Division reviews organization, management, and the case processing procedures of each office and of the judges.

CONSOLIDATION OF ACCOUNTS

Question: I note that we do not have a separate appropriation for the circuit and district courts. We have an appropriation for the salaries of the judges of those courts and another appropriation for the supporting personnel. Can you tell us why there are separate appropriations for the bankruptcy courts and the magistrates? Given the continuing demand for positions in these accounts, would it be desirable to consolidate all the accounts and give you greater flexibility -- subject, of course, to regular reprogramming?

Answer: Originally, there was a separate appropriation for bankruptcy because between July 1, 1947, and September 30, 1979, the bankruptcy system operated under a special fund in the Treasury into which fees and scheduled payments in bankruptcy cases were deposited and from which appropriations were made to the extent possible. The Bankruptcy Reform Act (Public Law 95-598) did away with the self-sustaining concept and the special fund in the Treasury is no longer available to finance the bankruptcy courts.

The magistrates system is a relatively new program in the Federal Judiciary. It was established by Public Law 90-578, approved October 17, 1968. Funds were first appropriated in fiscal year 1970 when a pilot program was initiated, and the first year of nationwide operation was 1972. Since this was a new program, the decision was made to establish a separate appropriation account to cover the costs of magistrates.

With respect to the Magistrates appropriation, we endorse the proposal of consolidation of accounts because there would be less paperwork, more efficient accounting, a greater ability to absorb pay costs, and funds could be reprogrammed in a more efficient manner. The workload being performed by magistrates is fairly stable, and the functions being performed by the magistrates and their staffs are an integral part of the operation of the district courts. The Judiciary fully supports the consolidation of this account. We would be pleased to cooperate with the Committee in working out the details of this proposal. However, in the case of the Bankruptcy appropriation, we believe the consolidation of accounts should be deferred until: (1) the workload stabilizes; (2) technical amendments are approved by the Congress; and (3) the recommendation for consolidation has been considered and approved by the Bankruptcy Committee of the Judicial Conference.

Questions Submitted by Senator Hollings

FEES OF JURORS AND COMMISSIONERS

Question: Last week the General Accounting Office reported that the juror utilization had not improved much over the last five years. In fiscal year 1980, $5,700,000 was expended for unused jurors, or 21 percent of the amount of the petit juror costs. The report indicates that the Chief Justice is also concerned about jury utilization. What is the reaction of the Administrative Office to the GAO report?

Answer: Efforts to improve juror utilization instituted about a decade ago have improved juror utilization rates. Although there are some courts where additional improvement is possible, for the most part costs have been brought down to the irreducible minimum. That fact accounts for the leveling off over the last five years. Some additional savings are perhaps possible, but they will not be great and certainly cannot be expected to approach the level of $5.7 million. The Chairman of the Judicial Conference Committee on the Operation of the Jury System is now preparing a response to the GAO report which should help clarify this matter further. The recommendations of the GAO will be addressed by the Conference Jury Committee and it, in turn, will formulate a further response.

Question: The General Accounting Office believes that the indices used by the Administrative Office overstate the amount of utilization. They urge an index based on jurors used and not used on the first day of a trial, a procedure endorsed by members of an Administrative Office committee. Does the Administrative Office plan to change to the recommended First Day Juror Utilization index?

Answer: At the request of the Judicial Conference Committee on the Operation of the Jury System, Administrative Office staff are investigating the feasibility of adopting a first day Juror Usage Index. Our present data collection system does not permit development of a first day juror usage index, so a new reporting form and detailed instructions for preparing it would be required. If the Jury Committee and the Judicial Conference agree to the adoption of a first day juror usage index, such a reporting system will be implemented.

Question: What effort is planned to induce the circuit judicial councils to insure that district courts effectively use jurors?

Answer: We will furnish copies of the GAO report on juror utilization to the chief judges of the circuits and to the circuit executives. We will request these officials to work through their judicial councils (which will include district judges after October 1, 1981) to adopt such portions of the report as will, in their opinion, best insure more effective juror utilization in the districts of their circuits.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Question: The 1982 increase includes two management analysts to review the economic benefits of word processing and like equipment. While it is indeed good to look before you leap, is there a continuing need for such analysts that could not more effectively be performed by ad hoc contracting with the specialized firms in this area?

Answer: There is a continuing need for analytical support to the courts since installing a word processing system is more than just a one-time project. Given our emphasis on developing systems as opposed to piecemeal installations of hardware and since the needs of the courts for this type of equipment are dynamic, not static, we believe that the addition of these two positions is the most economical and effective means of providing this analytical support.

The Administrative Office has had the benefit of the model word processing/electronic mail system in the Third Circuit (The Impact of Word Processing and Electronic Mail on United States Courts of Appeals (March 1979: FJC-R-79-2) and The Impact of Word Processing and Electronic Mail on the United States Courts of Appeals: Follow-up Study of the Third Circuit Project (June 1980: FJC-R-80-4)) developed by the Federal Judicial Center using in part contractual, specialized expertise. In light of this existing knowledge, the initial review and system design of additional systems can be best accomplished by providing internal staff resources. These analysts would have the benefit of accumulated experience in evaluating and tailoring systems for the courts, of knowing and having worked with court staff, and of developing detailed knowledge of the technologies that work best in the courts.

Additionally, even with outside expertise, there would still be the need for readily available support to help refine the system, assess new peripheral products and technologies as they are introduced, and trouble-shoot individual problems. Outside experts are not normally able to provide this type of ad hoc service since they are more project-oriented. Therefore, we fully expect that the two positions requested will continue to be actively involved in word processing for the foreseeable future.

SPACE AND FACILITIES

Question: The Committee was recently advised that last year's survey determined that space at 23 locations amounting to $177,026 in annual rent could be released by the Judiciary. Was this reduction taken into account in developing the request of $135,280,000 for space and facilities?

Answer: The reduction of $177,026 was not specifically considered in developing the fiscal year 1982 budget estimate, inasmuch as the survey was not finally approved by the Judicial Conference until March 13, 1981. However, the base appropriation for Space and Facilities was reduced by the Congress in fiscal year 1981 by more than $4,000,000. This sum must be absorbed through the savings referred to above and any additional savings that may be realized through more effective utilization of space by the courts in the future.

SALARIES OF SUPPORTING PERSONNEL

Question: The requests for additional deputy clerks are based on maintaining a staffing ratio between filings or appeals and positions. In view of the overall economic situation, are the overages in the staffing ratios bearable for another year?

Answer: Civil and criminal filings currently are projected to be higher than those estimates used in formulating our staffing requirements for fiscal year 1982. To expect the clerks' offices of the courts to absorb the increased workload would be counterproductive and may have an adverse effect on the processing and termination of cases in both the district courts and in the courts of appeals. All clerks' offices are continually being given additional responsibilities, particularly in the area of calendar management. In a recent report by the General Accounting Office it was recommended that clerks' offices be more directly involved in case management and docket control so as to relieve the judges of these administrative functions. The clerks' offices are being asked to assign cases to the judges, maintain case files and exhibits, record key case information on docket cards, provide monthly reports of these activities, monitor all cases on a systematic basis, and insure deadlines are met. If they are to be expected to perform these functions, it is essential that the additional personnel requested be provided.

Question: The proposed modifications to the Judiciary Salary Plan aggregate $1,304,000. How many of these changes represent increases for existing personnel who will continue to do the same job but at a higher salary?

Answer: Technically, the answer to your question is that all do. However, the modifications all recognize increases in responsibilities which have been assigned to the personnel in these positions since the Judiciary Salary Plan was developed. The additional responsibilities resulted from the passage of legislation or further delegation of functions from the Administrative Office. Please see page 7.29 of the justifications for an explanation of each position involved.

COURT SECURITY

Question: What is the Judiciary's assessment of the level of court security provided by the U.S. Marshals Service?

Answer: The level of security provided to the courts and to judicial personnel is inadequate. Despite the increasing costs of Department of Justice personnel, General Services Administration personnel, contract guards, and equipment, the Department of Justice has never sought an increase in its funding for court security. Therefore, the level and the quality of services have decreased. Another factor which lowers the level of court security provided by deputy marshals is the fact that the Executive Branch refused to seek funding to cover the costs of serving private civil process in fiscal year 1981 and may again refuse to seek such funding in fiscal year 1982. Yet because the deputy marshals are required to serve civil process by statute, they continue to perform that function -- at the expense of other programs including court security. The funding history as requested by the Department can be summarized as follows:

	F.Y. 1980	F.Y. 1981	F.Y. 1982
Total Number of Deputy U.S. Marshals Positions Authorized.....	1,956	1,711 (-245)	1,548 (-163)
Number of Positions - Court Security Program (including non-Deputy U.S. Marshals).....	747	391 (-356)	256 (-135)
Number of Positions - Service of Private Process Program (including non-Deputy U.S. Marshals).....	257	0 (-257)	0

Furthermore, there are high profile, sensitive trials that require extraordinary security measures -- measures which are extremely costly and are not provided for in the U.S. Marshals Service's budget. Resources to protect judges in these verified, life-threatening situations are "borrowed" from other program areas. This practice constitutes a significant drain on the resources designated for other programs such as court security. Like the lack of funding for serving private process, the lack of funding for personal security details severely limits the Marshals' ability to provide even minimum security for the Judiciary. The security provided by the Marshals falls far below the minimum need recognized by the Marshals themselves, by the Department of Justice, and by the Judiciary. See also letter which follows of December 5, 1980, from William E. Hall, Director of the U.S. Marshals Service to William E. Foley, Director of the Administrative Office of the United States Courts.

December 5, 1980

Mr. William E. Foley
Director, Administrative Office
of the U.S. Courts
811 Vermont Avenue, NW
Washington, DC 20544

Dear Mr. Foley:

At a meeting between members of our respective staffs on November 20, 1980, one of the items discussed was the pending Fiscal Year 1981 Appropriations Bill which eliminates $2,713,000 and 257 positions from the Marshals Service for service of private process.

The question was raised by your staff as to what impact, if any, this might have on the Service's ability to provide Federal Judiciary security support. The Service staff was optimistic that there would be no impact since we expected to seek a supplemental appropriation to restore the funding and position cut.

The legislation to terminate the Marshals Service from service of private process (S.314) did not pass, so a Fiscal Year 1981 supplemental appropriation request was prepared and submitted to the Department to restore the funding and position cuts. The Marshals Service has been advised that the Office of Management and Budget (OMB) will not allow the Department to request this supplemental even though the Senate Appropriations Committee stated in their report on the appropriation (No. 96-949, September 16, 1980) that they expect the Department of Justice to seek a supplemental appropriation. I have asked the Deputy Attorney General and Attorney General to appeal OMB's decision.

If the Department is unable to convince OMB to allow the Marshals Service to request a supplemental appropriation, then I will have no choice but to ask the Attorney General to terminate the Service's involvement in service of private process, and the Service will be required to begin some kind of reduction

in force. Needless to say, further reduction in staffing will have a deleterious impact on the Service's ability to support the security support needs of the Federal Judiciary.

Unfortunately, the Service is also critically short of financial resources to allow the existing and remaining work force to provide security support for the Federal Judiciary through use of overtime. The only alternative that could be available to the Department would be to consider transferring financial resources from other organizations to the Service. I would not expect this to happen, but it is an alternative available to the Attorney General.

If there should be any change in this bleak assessment, I will advise you so that you may keep the Judiciary informed of the problems being faced by the Service.

Sincerely,

William E. Hall

WILLIAM E. HALL
Director

Question: In view of the constraints on personnel at the Justice Department, should the function be transferred to the Administrative Office?

Answer: Please see our answer to the preceding question. The services provided by the Justice Department are far less than the authorization allows or the appropriations, on their face, would indicate. Unless the Executive Branch can be convinced to reverse its current policies, the only alternative may be to transfer the funding and/or the function to the Judiciary.

The steps necessary to provide adequate security are currently under review by the Judicial Conference. The Administrative Office was delegated the responsibility to provide the Court Administration Committee with a comprehensive study documenting the security needs of the United States Courts, setting minimum standards, detailing the deficiencies in the services now provided and recommending alternative solutions to the problem identified.

The Administrative Office is attempting to enter into an agreement with an organization with the expertise to perform this study. We do not feel that the General Services Administration or the United States Marshals Service is in a position to perform this study. After this study is performed, the United States Courts will outline the alternatives that are available and a funding plan to implement the results of the study.

SUBCOMMITTEE RECESS

Senator WEICKER. In his year-end statement, the Chief Justice expressed concern about the increasing amount of prolonged litigation. Are you conducting a study of this matter?

Mr. LEVIN. We have some studies going on relating to that, at the suggestion of the Chief Justice, particularly with respect to protracted cases in jury trials in support of Judicial Conference Committee work in the area. We are hopeful we will be helpful.

Senator WEICKER. Thank you very much, Mr. Levin. The subcommittee will recess until tomorrow at 9:30 a.m. when we will consider the request of the Marine Mammal Commission, the Select Commission on Immigration and Refugee Policy, and the U.S. Metric Board.

[Whereupon, at 11:03 a.m., Tuesday, March 10, the subcommittee was recessed, to reconvene at 9:30 a.m., Wednesday, March 11.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

WEDNESDAY, MARCH 11, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room S-146, the Capitol, Hon. Lowell P. Weicker, Jr. (chairman) presiding.

Present: Senators Weicker, DeConcini, and Bumpers.

U.S. METRIC BOARD

STATEMENT OF ANDREW KENOPENSKY, VICE CHAIRMAN

ACCOMPANIED BY:

ROGER TRAVIS, CHAIRMAN, ADMINISTRATIVE AND BUDGET COMMITTEE
MALCOLM E. O'HAGAN, EXECUTIVE DIRECTOR
HELEN T. STELLMAN, DIRECTOR, RESOURCE MANAGEMENT

BUDGET REQUEST

Senator WEICKER. The committee will come to order.

Our first request is that of the U.S. Metric Board.

The amount requested is $3,190,000, an increase of $482,000 over the 1982 base and provides for 37 permanent positions.

Appearing on behalf of this request is Mr. Andrew Kenopensky the Vice Chairman of the U.S. Metric Board, who is accompanied by Dr. Roger Travis of the Board, who is also Chairman of the Administrative and Budget Committee, Dr. Malcolm E. O'Hagan, Executive Director and Helen T. Stellman, Budget Officer.

Mr. KENOPENSKY. Good morning, Mr. Chairman. My name is Andrew Kenopensky. I am Vice Chairman of the U.S. Metric Board. It is a pleasure to be here this morning to appear before your committee.

Unfortunately, Dr. Louis Polk was unable to attend the meeting this morning because of his wife's illness and he sends his regrets. I also believe he has sent telegrams to the committee.

Mr. Chairman and members of the committee, I have with me today the Chairman of the Board's Administrative and Budget Committee, Dr. Roger Travis, who represents small business on the Board. I also have the Executive Director of our agency, Dr. Malcolm O'Hagan, on my left here, and our Budget Officer, Ms. Helen Stellman.

Mr. Chairman, my message to the committee today will be important but brief.

The U.S. Metric Board is requesting for fiscal year 1982 an increase of $482,000 and 3 additional positions, or a total funding level of $3.190 million and 37 full-time permanent positions.

While this does represent an increase in dollar value over the fiscal year 1982 figure, we would point out to the committee that a large portion of that request is to fund annualization costs for current services and to cover compensation and support costs for three additional positions requested.

The balance of the increase is to fund three additional research contracts and to provide additional support to the agency's metric education program.

For some time the American public has been engaged in debate over the issue of whether this country remains second to none in the world community. Questions have been raised concerning the soundness of our economy, our defense capabilities, and, just as important, whether this country is the technological giant it once was.

The American public has made its choice—not to turn back the clock—but rather to demand their tax dollars be spent on programs that will produce the tangible results necessary to strengthen our economic base.

Our Board agrees that this country presently faces an economic crisis. We continue to experience trade deficits, and imports are contributing to the loss of jobs domestically.

Several questions arise regarding our economy and its relationship to metric conversion. Will the voluntary move to metrics by companies in this country put us on a more competitive plane in the international market? Or, will that goal be abandoned in certain markets because they lack the capital investment ability to pursue such a course of action?

And what about the men and women in the labor force in this country? What cost, if any, will they have to assume for tools and retraining? And will voluntary metric conversion have a positive or negative effect on productivity?

The U.S. Metric Board is concerned with these important economic issues. The Board is undertaking and providing research in these areas, and is challenged by the prospect of aiding our Government in contributing to the development of this country's long-term economic policies.

It also looks forward to continuing to assist the private sector to affect voluntary conversion on a coordinated basis; to maximize benefits and minimize disruption; to serve as the coordinating agent for Federal and State government metric activities; and to ensure they are in consonance with voluntary private sector efforts.

Metric usage in this country is being seen more frequently in our daily lives. Whether it is in the dual labeled can of vegetables, or the 2 liter bottle of soda pop we purchase at our supermarket, or gasoline purchases by the liter, the voluntary use of the metric system is continuing and increasing.

It is an issue that could have a profound effect on our economy, and we trust future Congresses and administrations will continue to support our efforts in this area.

As you are aware, Mr. Chairman, those who serve on and set the policy of the U.S. Metric Board are not resident commissioners. In fact, for the most part, they are representative of the private sector. Most of our Board members have to meet payrolls and are responsible for departmental budgets within their company, educational institution, Government facility, or union. We are very sensitive to spending tax dollars and desire to see that our work makes a constructive contribution to the future of our country.

Now, it is our belief that we have used funds appropriated to date in a logical and cost-effective manner. We have stringently followed the specific provisions of our legislative act, as well as the instructions of this committee, and believe that a fair evaluation will confirm this view.

The U.S. Metric Board realizes we are unlike other Federal agencies. In fact, our Board has consistently reported to both the executive and legislative the desire to complete this agency's mission and then disband. With realistic manpower, resources, and congressional support for this agency's mission, the Board believes this can be a realistic accomplishment.

In the meantime, there is work to do and the membership of our Board is committed to the proposition that we will give the American public their money's worth.

Thank you, Mr. Chairman.

PREPARED STATEMENT

I would like to request that the complete lengthy statement become part of the record.

Senator WEICKER. Mr. Kenopensky, your entire statement will be made a part of the record at this point.

[The statement follows:]

STATEMENT OF ANDREW KENOPENSKY

Mr. Chairman, and Members of the Committee, I have with me today the Chairman of the Board's Administrative and Budget Committee, Dr. Roger Travis, who represents small business on the Board; the Executive Director of our Agency, Dr. Malcolm O'Hagan; and our Budget Officer, Ms. Helen Stellman.

Mr. Chairman, my message to the Committee today will be important but brief.

The United States Metric Board is requesting for FY 1982 an increase of $492,000 and 3 additional positions; or a total funding level of $3,200,00 and 37 full-time permanent positions.

While this does represent a dollar increase over our FY 1981 figure, we would point out to the Committee that a large portion of that requested is to fund annualization costs for current services and to cover compensation and support costs for the three additional positions requested. The balance of the increase is to fund three additional research contracts and to provide additional support to the Agency's metric education program.

For some time the American public has been engaged in debate over the issue of whether this country remains "second to none" in the world community. Questions have been raised concerning the soundness of our economy, our defense capabilities, and, just as important, whether this country is the technological giant it once was.

The American public has made its choice - not to turn back the clock - but rather to demand their tax dollars be spent on programs that will produce the tangible results necessary to strengthen our economic base.

Our Board agrees that this country presently faces an economic crisis. We continue to experience trade deficits, and imports are contributing to the loss of jobs domestically.

Several questions arise regarding our economy and its relationship

to metric conversion. Will the voluntary move to metrics by companies in this country put us on a more competitive plane in international trade? Or, will that goal be abandoned in certain markets because they lack the capital investment ability to pursue such a course of action?

And what about the men and women in the labor force in this country? What cost, if any, will they have to assume for tools or retraining? And, will voluntary metric conversion have a positive or negative effect on productivity?

The United States Metric Board is vitally concerned with these important economic issues. The Board is undertaking and providing research in these areas, and is challenged by the prospect of aiding our government in contributing to the development of this country's long-term economic policies. It also looks forward to continuing to assist the private sector to affect voluntary conversion on a coordinated basis; to maximize benefits and minimize disruption; to serve as the coordinating agent for federal and state government metric activities; and to ensure they are in consonance with voluntary private sector efforts.

Metric usage in this country is being seen more frequently in our daily lives. Whether it be the dual labeled can of vegetables, or the two liter bottle of soda pop we purchase at our supermarket, or gasoline purchases by the liter, the voluntary use of the metric system is continuing.

It is an issue that could have a profound effect on our economy, and we trust future Congresses and Administrations will continue to support our efforts in this area.

As you are aware, Mr. Chairman, those who serve on and set the policy of the United States Metric Board are not "resident commissioners" but part-time board members and are, for the most part, representatives from the private sector. Most of our Board Members have to meet payrolls or are responsible for departmental budgets

within their company, educational institution, government facility, or union. We are very sensitive to spending tax dollars and desire to see that our work makes a constructive contribution to the future of our country.

It is our belief that we have used funds appropriated to date in a logical and cost effective manner. We have stringently followed the specific provisions of our legislative Act, as well as the instructions of this Committee, and believe that a fair evaluation will confirm this view.

As a means of demonstrating this the Members of our Board factually point to some of the accomplishments of this past fiscal year:

- The United States Metric Board has completed the following research initiatives:

  (1) Survey of Large U.S. Manufacturing and Mining Firms (Fortune 1000) to Determine Metric Status reported, among other things, that while six percent of the sales by the nation's top industrial firms are from products that are made to metric dimensions, there was little evidence of comprehensive corporate level metric planning and coordination. An additional five percent of sales income involves products with both metric and customary components, while over 20 percent of sales are of products labeled in metric units. 63 percent of the largest industrial firms sell products that are either made to metric dimensions or carry metric information on the labels. About half of all large companies sell "soft-converted" (dual labeled) items while about one-third of the companies have "hard-converted" (metric dimensioned) some of their products to metric standards.

  (2) Phase I Survey of Small Businesses to Identify the Issues in Metric Planning and Conversion to the Metric System reported, among other things, that for the

selected business categories surveyed, problems encountered in the process of metricating have generally been met and overcome by the use of resources within the business community and apparently without serious economic or operational trauma.

(3) Phase I Survey on Effects of Metric Conversion on Measurement and Dimensionally Sensitive Occupations reported, among other things, that upon review of occupational job descriptions listed in the Dictionary of Occupational Titles, it was found that 46% of said occupations are sensitive to measurement change.

- We have monitored and coordinated metric activity of the federal agencies through the Interagency Committee on Metric Policy (ICMP) in consultation with the Office of Management and Budget (OMB).

- Supported and assisted the ICMP in developing a Policy and Guidelines on Metric Conversion for federal agencies to ensure that if voluntary conversion did occur it would be accomplished in a uniform and non-duplicating fashion.

- Developed, approved and published in the Federal Register "Planning Guidelines" which established the principles and procedures for groups that wish to prepare a metric conversion plan.

- Compiled and published a set of 5 U.S. regional reports delineating the status of metric in the 50 states.

- Organized and held a 3-day meeting for Governor designees from each state to discuss and implement the National Conference on State Metrication to coordinate state metric planning activities and address relevant issues.

- Published the proceedings of the First Conference on State Metrication held in Nashville, Tennessee.

- As required by P.L. 94-168, the Metric Board completed a year-long study of legal impediments and barriers entitled, "Providing a Metric Option" which concluded that while future changing conditions may require otherwise there is no present need for Congress to provide a new structural mechanism to convert customary units of measure to metric units in laws and regulations at all levels of government.

- We published a booklet entitled "Antitrust: A Handbook for Metric Planning and Conversion" to be of assistance to the non-lawyer which we believe substantially will minimize the antitrust risks for companies that engage in joint efforts to develop and implement metric conversion plans.

- We have made available to the State Attorneys General and Legislative Councils of the several states a Metric Legal Information Kit.

- The U.S. Metric Board has held bimonthly Public Forums throughout the country to receive comments from the private sector and citizens relating to ongoing conversion or the issue in general.

- To date, our public awareness program has secured well over 100 TV and radio interviews and has reached a potential audience of 150 million people through all media.

- The Metric Board planned and coordinated National Metric Week (1980) which reached through schools, museums, industry, and public information posters, an estimated potential audience of 45 million.

- We have raised public awareness by participating in special events such as:

  (1) March of Dimes Walk-a-Thon

  (2) Special Olympics

- We have developed and distributed public service announcements for:

  (1) Winter Olympic Games - radio used by ABC network

  (2) Liter Dispensing of Gasoline - radio and TV carried by networks

- We have developed and are distributing a weekly public service radio series entitled "Metric Magazine" which has been placed in all major media markets and with over 500 radio stations.

- We published a document entitled "Metric Usage Study: A Look at Six Case Histories" detailing both problems and opportunities in metric conversion.

- We have organized and conducted metric training seminars for private industry, government employees, and Congressional aides.

- We published our first Annual Report giving an accounting of metric usage in America.

The United States Metric Board recognizes that we are unlike many federal agencies. In fact, our Board has consistently reported to both the Executive and Legislative the desire to complete this Agency's mission and then disband. With realistic manpower, resources, and Congressional support for this Agency's mission, the Board believes this can be a realistic accomplishment.

In the meantime, there is work to do and the membership of our Board is committed to the proposition that we will give the American public their money's worth.

PERMANENT STAFF VACANCIES

Senator WEICKER. How many vacancies did you have on your permanent staff as of the January 1?

Mr. O'HAGAN. We didn't have any on the first of January. We are operating under the hiring freeze.

Senator WEICKER. Wait a minute, you are operating under the hiring freeze. Are you saying that without the freeze there would have been vacancies?

Mr. O'HAGAN. Yes; we were authorized last year 36 positions. Under the freeze, we were reduced to 31 positions.

ELIMINATION OF METRIC BOARD

Senator WEICKER. In light of the general public's lack of support for metric conversion, its insignificant impact on trade, as evidenced by the NBS and GAO studies, the fact that auto industry has converted without the Board's assistance, and the need for the Federal Government to drastically cut its budget, why shouldn't the U.S. Metric Board be eliminated and thus save the taxpayers $3,190,000?

Mr. KENOPENSKY. Mr. Chairman, the citizens of the United States are often confronted with things they do not like to participate in. However, unfortunately our country being part of a metric world, there are certain instances where whether we like it or not, we are going to compete in the marketplace with countries who have products in metric dimension.

I would like to cite two examples. A year and a half ago Chrysler Corp. lost a tank contract primarily because it did not build tanks in metric dimension. That contract went to the Netherlands, which cost the American citizens jobs and corporations income and profits.

As you know, the United States only has one vote in situations where NATO is procuring military equipment. And maybe if Chrysler had the capability of producing tanks in metric dimension, it would have won that contract and they wouldn't be in the situation they are in today.

The second thing, which is of concern to me, my union represents virtually hundreds of thousands of people in the aerospace industry, and the International Aviation Commission where, again, the United States has only one vote, mandated heights and distances in metric within a specific timeframe.

Of course, the Government is currently appealing that decision. Again, we are in a situation where our manufacturers in that particular industry are perfectly satisfied with customary units. However, we are forced into a situation where our vote will not change the opinions of the metric world.

So we might be forced into a situation in defense or in the world market where we have no choice.

You cited the auto industry. I am very familiar with that. I spent my lifetime working in the auto and trucking industry. There are 88,000 small businesses and subcontractors involved with the auto industry. To them, like the auto mechanic and the Chevy dealer, they have no decision to convert or not to convert. General Motors made a decision to develop the concept of the world car and use one measurement sys-

tem. We had several small businesses testify at our public forums. One, for example, was a company called Michigan Rivets. There are no negotiations between suppliers and the auto industry. General Motors signed a contract and said to build rivets to metric dimensions. Their only choice was to build them and buy the machinery necessary to do it or not to have the contract because they will find someone else. The same way with the auto mechanic and the Chevrolet dealer in 1975, when the metric cars came into the shops, the dealer didn't say, "Do you wish to work on a metric car?" They had to work on the metric car, learn the metric system, and they had to go out and purchase metric tools. So I think the Metric Board needs to exist because, in my opinion, there is going to be an ongoing need to publicly educate the American people to help them through this period. We also have research projects going on to see what the effect is on workers and small business.

I, for one, think that this activity needs to be a coordinated activity.

In the area of consumers, I think we can play a major role in education. I think more importantly than that, our youngsters who are in elementary and secondary schools are going to be faced to one degree or another with a dual U.S. customary and metric usage. Some youngsters coming out of high school—will immediately go into the machine tools trade, auto mechanics, and so on—and will be confronted with working with the dual system, metric vehicles and customary vehicles. Others, to a certain degree, will not be affected at all. But I think the educational institutions in America have a responsibility to put into their curriculums both metric and customary measurements because our children will be living a lifetime of dual systems based on the amount of conversion activity that has taken place so far.

Senator WEICKER. I don't disagree with some of the statements you make. On the other hand, this is the time that supposedly free enterprise and the private sector is going to bear a greater burden of what goes on in this country. The very examples you cite, General Motors and their suppliers, there is nothing you people can do about that.

Indeed, it is probably a rather harsh approach toward the subject. My concern is that this budget is very limited. You talk about education in metric. I can tell you something you know more about than I do, I am not going to have enough money to go ahead and supply vocational training to my kids.

I have further questions for the Board which I will go ahead and submit to you for response to the record. I have no further questions at this time.

I thank you very much.

Mr. KENOPENSKY. Thank you, Mr. Chairman.

ROLE FOR SMALL BUSINESS

Mr. TRAVIS. Senator, I would like to add one thing on why we believe the Metric Board should definitely stay in business and particularly from the small business standpoint. If the Metric Board does nothing else, it serves as a watch dog on Government to insure Federal agencies do not implement metric practices particularly in the area of procurement, which would place procurement burdens on small businesses.

I think the Metric Board will be a watchdog agency on other agencies to protect small businesses. Nobody else is there to do it if we don't do it.

JUSTIFICATIONS AND ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. Thank you very much.

We will include the justifications and the additional questions in the records.

[The information follows:]

JUSTIFICATIONS

UNITED STATES METRIC BOARD

Salaries and Expenses

For expenses necessary to carry out the provisions of the Metric Conversion Act of 1975 (14 U.S.C. 205), $2,708,000 $3,190,000. (Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act 1982.)

PROGRAM AND FINANCING SCHEDULE

Identification code 95-3100-0-1-376	80 actual	81 estimate	82 estimate
Program by activities:			
1. Policy and executive direction	373	480	482
2. Public information	555	565	749
3. Research, coordination and planning	645	876	1,110
4. Legal and resource management	471	787	849
Total program costs, funded	2,044	2,708	3,190
Change in selected resources (undelivered orders)	345	...	...
10.00 Total obligations	2,389	2,708	3,190
Financing:			
25.00 Unobligated balance lapsing	158	...	...
40.00 Budget authority (appropriation)	2,547	2,708	3,190
44.20 Pay raise supplemental	...	...	...
Relation of obligations to outlays:			
71.00 Obligations incurred, net	2,389	2,708	3,190
72.40 Obligated balance, start of year	113	478	668
74.40 Obligated balance, end of year	- 478	- 668	- 778
90.00 Outlays	2,024	2,518	3,080
91.20 Pay raise supplemental	...	...	...

OBJECT CLASSIFICATION (in thousands of dollars)

Identification code 95-3100-0-1-376	1980 actual	1981 estimate	1982 estimate
Personnel compensation:			
11.1 Permanent positions	945	1,130	1,224
11.3 Positions other than permanent	225	168	177
11.5 Other personnel compensation	10	40	40
11.8 Special personal services payments	109	141	141
Total personnel compensation	1,289	1,479	1,582
Personnel benefits:			
12.1 Civilian	123	129	137
13.0 Benefits for former personnel	...	...	...
21.0 Travel and transportation of persons	172	163	164
22.0 Transportation of things	8	6	6
23.1 Standard Level User Charge	66	143	189
23.2 Communication, utilities, and Other rent	142	119	134
24.0 Printing and reproduction	60	75	98
25.0 Other services	476	536	805
26.0 Supplies and materials	34	45	66
31.0 Equipment	19	7	9
32.0 Lands and structures	...	...	...
33.0 Investments and loans	...	...	...
41.0 Grants, subsidies, and contributions	...	...	...
42.0 Insurance claims and indemnities	...	...	...
43.0 Interest and dividends	...	...	...
44.0 Refunds	...	...	...
99.0 Total obligations	2,389	2,708	3,190

PERSONNEL SUMMARY

Identification code 95-3100-0-1-376	FY 80 actual	FY 81 estimate	FY 82 estimate
Total number of permanent positions	31	34	37
Total compensable workdays:			
Full-time equivalent of other positions	37.4	42.8	48.0
Full-time equivalent of overtime and holiday hours	6.4	10.1	9.71
Average ES salary	$51,381	$51,600	$51,600
Average GS grade	12.7	11.0	11.14
Average GS salary	$30,952	$30,575	$31,790

DETAIL OF PERMANENT POSITIONS

95-3100-0-1-376	FY 80 actual	FY 81 estimate	FY 82 estimate
Executive Level III	1	1	1
ES-4	2	3	3
ES-2	1	1	1
Subtotal	4	5	5
GS/GM-15	3	3	3
GS/GM-14	1	6	6
GS/GM-13	12	6	8
GS-12	-	-	1
GS-11	1	1	1
GS-10	-	-	-
GS-9	1	1	1
GS-8	1	5	5
GS-7	5	4	4
GS-6	-	-	-
GS-5	3	3	3
GS-4	-	-	-
Total permanent positions	27	29	32
Unfilled positions, end of year	1	-	-
Total permanent employment, end of year	30	34	37

UNITED STATES METRIC BOARD ORGANIZATIONAL CHART AS OF 12/31/80

ON BOARD COMPLEMENT - FTP

17 Members
Louis Polk, Chairman

Andrew Kenopensky, Vice Chairman

Sydney Andrews
Francis Dugan
Thomas Hannigan
Frank Hartman

Bruce Johnson
Sandra Kenney
Joyce Miller

Glenn Nishimura
Satenig St. Marie
Dennis Smith
Roger Travis
Adrian Weaver

Vacancies (3)

Office of the Executive Director

Malcolm O'Hagan, Executive Director
Mary Jones, Secretary
LuVerne Hall, Confidential Asst. (Board)
James Skinner, Congressional Relations Off.

Office of Research, Coordination & Planning

Stanley Parent, Director
Jane Satter, Secretary
Alan Whelihan, Chief, Coordination and Planning
Coleen Tresser, Secretary
Edward McEvoy, Chief, Research
Sylvia Melton, Secretary
Lawrence Chisholm, Program Analyst
John Tascher, Program Analyst
David Freund, Program Analyst
Charles Donner, Program Analyst
Stephen Vastagh, Program Analyst
Daniel Hoagland, Operations Research Analyst
Eugene Visco, Operations Research Analyst
Bernice Hayes, Clerk (Typing)

Office of General Counsel

Theodore Farfaglia, General Counsel
Daniel Peyser, Attorney

Office of Resource Management

Helen Stellman, Director
Donald Roads, Systems Accountant
Faye Dixon, Personnel Mgmt. Spec.
Ursula Stevens, Accounting Tech.
Mike Anzelmo, Supply Clerk

Office of Public Awareness & Education

John Donnelly, Director
William DeReuter, PI Specialist
Douglas Bernon, PI Specialist
James Cast, A/V Information Officer
Charles Maurer, PI Specialist
Lorraine Abdullah, Clerk-Stenographer

UNITED STATES METRIC BOARD
SUMMARY STATEMENT
FISCAL YEAR 1982 BUDGET REQUEST

The United States Metric Board requests an increase of $492,000 and 3 new positions in FY 1982. These increases will bring the USMB to a total of $3,200,000 in funding with 37 full-time permanent positions.

The passage of the Metric Conversion Act (P.L. 94-168) in 1975 established the United States Metric Board with a mandate "to devise and carry out a broad program of planning coordination and public education consistent with other national policy and interests...". It was recognized with the enactment of P.L. 94-168 that metric conversion would have an impact on every American; to be certain that all voices would be heard Congress appointed 17 Board members to represent the many and varied viewpoints on metric conversion. The Board has attempted to assess the future of metric conversion in the private and public sectors, to determine its effect on small businesses as well as large industrial sectors and, last but not least, on the individual consumer. The Board's role as a neutral party in offering assistance and advice will be carefully preserved; the composition of its membership assures this end.

In response to congressional wishes, Board members have heard from a cross section of Americans through a series of public forums held in conjunction with bi-monthly board meetings. The Board has travelled to a number of cities and has listened as representatives from many organizations voiced their opinions on metric conversion.

It has become clear that the issues are more complex than originally anticipated when P. L. 94-168 was enacted. It is also obvious that this Agency with its small staff can respond only minimally to the many requests from the public for information on metric conversion.

Through its Public Awareness and Education activity the Board attempts to provide the public with basic information on metrics. The program currently operates with only five full-time professional staff members who arrange public forums, produce public service announcements, produce and distribute metric informational materials, and carry out a number of other education and information activities.

Considering the confusion that apparently continues to exist in the minds of many Americans on metric conversion, five professional staff members can not possibly be expected to educate and inform a nation of 230 million people. Therefore, this budget package contains a request for an increase of three positions to strengthen the Agency's education and information activities. We believe it is important for the public to comprehend that metric conversion is not mandatory but may be adopted when it is considered advantageous to a business or industry. More importantly, we intend through our education activity to help individual consumers understand how metric conversion will affect their lives so they may make educated decisions in the market place.

During this Agency's planning process for Fiscal Year 1981, it was decided that an initial step in any nationwide coordination effort on metric conversion had to involve the fifty states. The USMB must establish supportive contact and rely on the states for coordination resources, not only because of the limit on Board funds, but more importantly to recognize the historic rights of the state to regulate weights and measures within their borders. Consequently, in September of 1980, the Metric Board convened the first National Conference on State Metrication at Nashville, Tennessee. Experts with opinions both for and against metrics were given an opportunity to speak out. As a result of the Nashville meeting a National Council on State Metrication was formed and a program was created to provide states with an information exchange bank that would begin to identify the status of conversion activity within each state and pinpoint real or perceived legal barriers to metric conversion, at the state level.

In concert with State activities, the Board renewed its effort to coordinate metric policies and procedures within the Federal establishment through the Interagency Committee on Metric Policy. Federal conversion policy and guidelines for its implementation have been developed and public comment has been solicited.

During 1982 a major effort of the Board will be directed to the individual consumer. The Board expects to provide consumers with information on products affected by conversions and assist them in understanding what the various changeovers mean to them.

Detailed descriptions of objectives, cost information and increases requested are included in the individual program packages which follow. This Agency seeks your full support for the resources requested to meet its goals during fiscal year 1982.

Composition of the U.S. Metric Board

P.L. 94-168 provides for 17 Board members representing many different parts of the economy and social structures as follows:

1	Chairman
1	Engineering
1	Scientific/Technical
1	Manufacturing
1	Retailing
2	Labor
1	State/Local Governments
2	Small Business
1	Construction
1	Standards
1	Educational
4	At Large
17	Total

The Major function of the Boards' Program are described below:

1. Policy and Executive Direction - establishes policy and program objectives, directs and manages the agency.

2. Public Awareness and Education - publicizes specific metric programs, assists the nation to understand the meaning and applicability of metric terms and measures in daily life, and publishes information about the extent of metric usage and the activities of the United States Metric Board.

3. Research, Coordination and Planning - develops and directs metric research projects and employs the knowledge gained about metric conversion issues to maximize the opportunities for beneficial achievements and to minimize economic dislocations and inefficiencies through coordinating the increasing use of the metric system in the nation.

4. Administration and Legal Support - provides financial management, personnel management, procurement and space management, and other administrative support services. The legal staff is also charged with coordinating required changes to laws and regulations at all levels of government to enable voluntary metric conversion plans to be successfully implemented.

Summary by Activity
($000)

	Actual FY 1980		Estimate FY 1981		Total FY 1982	
	Pos.	Amount	Pos.	Amount	Pos.	Amount
Policy & Executive Direction	3	373	4	480	4	483
Public Information	6	574	7	565	10	749
Research, Coordination & Planning	14	878	15	876	15	1,220
Legal	3	156	2	147	2	147
Resource Management	5	408	6	640	6	721
Total	31	2,389	34	2,708	37	3,200

Justification
Policy & Executive Direction
FY 1982 Budget Request

Major Goals

1. Establish policy and program objectives for the agency.

2. Direct the management of agency operations.

3. Represent the agency to the President and the Congress.

4. Represent the agency to outside groups and to the general public.

Agency policies and program objectives are formulated by committees of the Board and approved by the Board. Staff provides support and participates in all committee deliberations. The Executive Director is responsible for implementing the policies and programs approved by the Board.

Funds are requested to allow the 17 Board members who reside in different areas of the country to meet on a regular basis; to provide staff support to the Board members; and to support the Office of Executive Director. When meetings are held out of Washington, as has been customary, staff must travel to the meetings.

Anticipated Accomplishments

The Board will be required to address a number of issues in FY 82. Among them will be: a reassessment of the voluntary program of metrication and the requirements if any, for legislative amendments; recommendations for dealing with issues raised in research which is now underway concerning the impact of increasing metric usage on small businesses and workers; means of expanding the Board's public education program in the most cost effective manner; issues raised by states through the National Council on State Metrication an assessment of the policy and guidelines adopted for Federal agencies.

The Board expects an increase in requests from the private sector for assistance in various aspects of the conversion process. This may require the Board to conduct hearings, investigate the implications for consumers and others of proposed conversion plans, research specific conversion related issues, make the public aware of impending changes and assist in appropriate public education programs.

Metric conversion can directly affect productivity, improve the ability of U.S. companies to compete in metric markets and consequently contribute to improved economic conditions here at home. The Board will be working closely with the President's Special Trade Representative and with the International Trade Administration at the Department of Commerce on issues relating to metrics and world trade. The Board will also be working closely with the Small Business Administration in evaluating the most effective means of assisting small business to cope with metric requirements and take advantage of metric opportunities.

The increase of $2,633 requested for this program is for mandatory within-grade increases.

Summary
Policy and Executive Direction
FY 1982 Budget Plan

	Actual FY 1980		Estimate FY 1981		Estimate FY 1982		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Compensation and Benefits	3	$257,953	4	$355,970	4	$354,703	-	+$2,733
Travel/Transportation		87,600		96,300		96,300		-
Rents, Communications, Utilities		15,700		12,700		12,900		+ 200
Printing		2,800		3,300		3,000		- 300
Other Services		7,000		11,600		12,000		+ 400
Supplies/Equipment		2,000		2,400		2,000		- 400
Total	3	373,053	4	480,270	4	482,903	-	+ 2,633

Board
FY 1982 Budget Plan

	Actual FY 1980		Estimate FY 1981		Estimate FY 1982		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Compensation and Benefits	-	$76,953	-	$149,587	-	$149,587	-	$ -
Travel/Transportation		78,000		88,400		88,400		-
Rents, Communications, Utilities		13,000		10,000		10,000		-
Printing		1,800		1,000		1,000		-
Other Services		6,000		10,000		10,000		-
Supplies/Equipment		1,000		1,000		1,000		-
Total	-	176,753	-	259,987	-	259,987	-	-

Executive Director
FY 1982 Budget Plan

	Actual FY 1980		Estimate FY 1981		Estimate FY 1982		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Compensation and Benefits	3	$181,000	4	$204,383	4	$207,116	-	+ $2,733
Travel/Transportation		9,600		7,900		7,900		-
Rents, Communications, Utilities		2,700		2,700		2,900		+ 200
Printing		1,000		2,300		2,000		- 300
Other Services		1,000		1,600		2,000		+ 400
Supplies/Equipment		1,000		1,400		1,000		- 400
Total	3	196,300	4	220,283	4	222,916	-	+ 2,633

Justification
Office of Public Awareness and Education
FY 1982 Budget Request

Major Goals

The activities and efforts of the Office of Public Awareness and Education are planned and directed toward the achievement of three major goals.

While a wide variety of tools and techniques, both informational, and instructional are employed, they are focused directly on the accomplishment of these three principal objectives.

1. Educating the public about the presence, role and responsibilities of the United States Metric Board.

In essence, it is an effort to achieve public identity. Implicit in this objective is the fundamental need for a new agency to create public awareness of its presence as a source of information, advice and assistance on matters related to metric usage and metric conversion. Simply stated, our job is to let the public know that we exist, where we are, and what we can do for them.

2. Educating the public to the voluntary nature of metric conversion.

This objective is in response to the express directive of Congress and the GAO report on metrics, which found that there exists widespread public misconceptions about the voluntary nature of metric conversion in this country.

3. Educating the public about the meaning and applicability of metric terms.

This objective is in direct response to the mandate of Congress incorporated in P.L. 94-168. One of the principal charges given the agency under the Act is to help familiarize people with the meaning and use of metric terms in their everyday lives. As metric conversion takes place in this country there will be an increasing need to help consumers, businessmen and others develop a practical working knowledge of the meaning of metric terms and how they relate to customary units of measurement.

As its name suggests, the office is organized to serve the principal and complementary functions of information and education; the office should not be perceived as a public relations activity promoting metric conversion.

In recognition of the fact that neither funds nor personnel are adequate to undertake an extensive, in-depth awareness and educational effort on a national scale, we attempt to maximize exposure and impact through a variety of activities that attract the interest, attention and coverage of the mass media. To a large degree our efforts have been directed toward communicating our messages to the public through the press. This must be a continuing effort directed toward progress in the first two objectives stated under "major goals."

Additionally, the office prepares and distributes educational materials including public service announcements for radio and television, responds to a large volume of public mail requesting information about the metric system and its use, conducts seminars on metric usage for private industry and government agencies, sponsors other activities of an educational nature designed to teach the basics of the system to the public.

Anticipated Accomplishments

The current funding level for this activity is barely adequate to support a passive program of a responsive nature. It provides only very limited resources to undertake communicative initiatives designed to accomplish the directives given to us by the Congress.

The funds requested for this program for FY 1982 will permit a somewhat more energetic level of activity. Our main emphasis in 1982 will be to educate the public on the increasing change over to metric in various businesses and industries throughout the nation. The addition of three (3) new staff members will permit us to step up our production of information training materials. We intend to further our education efforts through a series of public service announcements directed toward the consumer.

An increase of $554,400 is requested to bring this activity to a level of funding consistent with the increasing demand for metric education materials.

Public Awareness and Education
FY 1982 Budget Plan

	Actual FY 1980		Estimate FY 1981		Estimate FY 1982		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Compensation and Benefits	6	$312,057	7	$308,030	10	$385,694	+ 3	+$77,664
Travel/Transportation		21,000		14,500		14,500		-
Rents, Communications, Utilities		38,692		31,000		31,000		-
Printing		44,900		40,000		46,540		+ 6,540
Other Services		131,900		152,000		252,000		+100,000
Supplies/Equipment		25,000		19,000		19,000		-
Total	6	573,549	7	564,530	10	748,734	+ 3	+184,204

Justification
Office of Research, Coordination and Planning
FY 1982 Budget Request

Major Goals

To insure that voluntary changeovers to the metric system in the private and public sectors occur with maximum opportunity to achieve the potential benefits of metric usage and minimum economic dislocation, inefficiency and related problems. To reach this objective, two broad areas of activity are undertaken:

- the active coordination of the increasing use of the metric system because it is believed that economic dislocation, inefficiency and related problems are inherent in unplanned or uncoordinated conversions; and

- the identification and analysis of metric usage issues, supported by compilation of information and data on metric use and metric conversion, and the conduct of research suggested by such analyses.

The immediate objectives consist of:

- the effective coordination of Federal and State metric activities;

- effective contact with Private Sector metric planning and conversion organizations;

- the determination of the extent and impact of metric usage in the U. S. and attendant costs and benefits; and

- information exchange and technical assistance with and for parties involved in voluntary metric conversion activities.

Specific activities related to the immediate objectives include:

- the development of organizational processes and procedures for effective coordination of Federal and State metric activities and for effective contact with the Private Sector organizations;

- the development and maintenance of reliable, valid and economic methods for measuring the extent and impact of metric usage;

- the preparation of an annual status report on and projection of metric usage in the U. S.;

- research efforts focused on particular issues surfaced during prior years.

The programs which make up the Research, Coordination and Planning activity are:

- State Program
- Federal Program
- Private Sector Program
- International Program
- Conversion Data Program
- Research Program

The detailed agenda of these program areas are as follows:

1. State Planning and Coordination Program

   a. Objectives

      The long range objectives of this program are the elimination or reduction of confusion, inefficiency and related problems encountered by the States when they deal with internally generated metric usage and conversion activities and the coordination of State and local metric related initiatives with affected Federal and private sector organizations.

      The immediate objectives are effective and efficient information exchange and administrative assistance to and among the States, so that responsive access to information, experience and emerging problems is available to all States.

   b. Anticipated Accomplishments

      Secretariat support will be provided, coordination and information exchange among state metric committees will be provided by mail and telephone, and as needed meetings will be held with officials of the National Conference on Weights and Measures.

      Seminars on metric educational topics will be provided to the State Conference participants, regional meetings will be held, state metric committees will receive additional coordinative support allowing for more effective contact and committee and conference output, a quarterly information report will be distributed to the states, meetings between state metric officials and representatives of a variety of public sector and metric coordinating organizations will be conducted and a group representing state legislative and legal elements will be formed to coordinate activity relative to model metric laws and regulations.

2. Federal Planning and Coordination Program

   a. Objectives

      This program's long range objectives are the elimination or reduction of confusion, inefficiency and related problems encountered by Federal agencies when they deal with metric use and conversion activities.

   The immediate objectives are:

   - the encouragement of consistent metric policies, plans and procedures for Federal agencies;
   - the provision of sufficient administrative support services to interagency metric operating and policy committees to insure effective meetings, deliberations, and communications among the agencies;
   - the coordination of Federal agency metric activities with the private sector and State and local governments;
   - the identification of the needs of public and private organizations for metric standards;

- the reduction or elimination of barriers to the development and use of metric standards.

b. Anticipated Accomplishments

Limited logistical support will be provided the Interagency Committee on Metric Policy (ICMP) and the Metric Operating Committee (MOC), some assistance will be provided selected MOC subcommittees in defining roles, information contacts will be arranged in ongoing conversion areas and limited monitoring of public and private standards development will be carried out.

3. Private Sector Planning and Coordination Program

a. Objectives

The long range objective of this program is the elimination or reduction of confusion, inefficiency and related problems encountered by private sector organizations voluntarily concerned with planning for or coordinating metric use. Informed and coordinated industry conversion decisions and actions represent the long range focus of the program.

For the immediate future, the objectives are:

- the test, refinement and application of the USMB planning guidelines;

- the alleviation or reduction of consumer confusion by the provision of information to consumer organizations;

- the reduction of barriers to metric conversion; and

- the improvement of business decision-making about metric use.

b. Anticipated Accomplishments

Selected industrial conversion efforts nearing completion will be monitored and reviewed by application of the planning guidelines, information will be provided on request and a method of evaluating conversion plans will be designed.

4. Conversion Data Program

a. Objectives

This program is a general support program for the technical programs of coordination and planning by sector (that is, private, Federal, State, and international). Its continuing objective is the timely provision of valid and relevant information and data on metric usage by the private and public sectors.

The immediate objectives are to:

- determine the information needs of the technical programs and others using the data programs;

- centralize the metric data and referral services of the USMB and refine the information storage and retrieval processes;

- analyze and organize the data to facilitate interchange with public and private sector organizations and;

- organize and conduct hearings on metric issues so as to determine relevant opinions and facts to assist in the formulation of national positions.

b. Anticipated Accomplishments

Readily available information will be provided to outside requesters and active distribution will take place within the USMB, limited exchange of data will take place with industrial organizations, and the feasibility of gathering relevant metric data directly through the Census Bureau will be determined.

5. Research Program

a. Objectives

This program is also a general support program; its long range objectives are to:

- determine the potential and actual impact of metric use in the U. S. and;

- determine through an assessment of conversion status when the USMB has done all it reasonably can to facilitate the voluntary conversion process.

For the immediate future, the Research Program's objectives are:

- the definition of the most promising issues to be the target of current research efforts;

- the identification of variables that will help measure the effectiveness of the USMB (that is, baseline data on the extent and efficiency of the coordination, planning and public awareness activities);

- determination of the decision processes by which conversion to the metric system occurs; and

- a tested, valid, responsive and economical approach to estimating the extent and impact of metric use in the U.S.

b. Anticipated Accomplishments

The increase requested for FY 1982 for research is $200,000, bringing the total cost of Research Projects to $400,000. A list of the proposed projects follows:

RESEARCH

Current Mission Related Contracts - FY 1981

Status Survey	$ 50,000
Development of a Market Basket Survey	75,000
Conversion Data	25,000
Econometric Model	50,000
	$200,000

Proposed Issue Related Contracts - FY 1982

Consumer Impacts	$100,000
Small Business Impact IV	50,000
Worker Tool/Human Factors IV	50,000
	$200,000

TOTALS	$400,000

Research, Coordination & Planning
FY 1982 Budget Plan

	Actual FY 1980		Estimate FY 1981		Estimate FY 1982		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Compensation and Benefits	14	$553,400	15	$585,000	15	$599,500	-	+$14,500
Travel/Transportation		57,600		45,800		47,000		+ 1,200
Rents, Communications, Utilities		15,200		16,000		16,000		-
Printing		5,500		9,000		24,000		+ 15,000
Other Services		244,700		215,560		415,560		+200,000
Supplies/Equipment		1,800		4,700		8,000		+ 3,300
Total	14	$878,200	15	876,060	15	1,110,060	-	+234,000

The Office of Research and Coordination is requesting an additional $234,000 for FY 1982. $14,500 will be necessary to fund within-grade raises and promotions, $15,000 to fund additional printing costs resulting from a decision to accomplish in-house, work formerly performed under contract; and $200,000 to fund three additional contracts listed on page 23.

Justification
Office of General Counsel
FY 1982 Budget Request

Major Goals

The overall goal is to provide expeditious and correct legal advice to the Board, its staff and to other authorized persons, government agencies and organizations on a wide variety of subjects, which generally support and enhance the responsibilities, objectives and actions of the Board. There are three specific goals or programs:

1. Identify in the public sector, at all levels of government, laws and regulations which pose barriers to the increasing voluntary use of the metric system and coordinate changes to laws and regulations required to enable voluntary metric conversion plans to be successfully implemented.

2. Identify and analyze areas of legal concern in the private sector that may inhibit planning for voluntary conversion to the metric system, particularly matters related to real or perceived antitrust problems, and coordinate broad solutions including, if necessary, proposing remedial legislation.

3. Act as agency counsel and insure that all actions of the Board are legally and ethically correct.

An increase is not requested for this program in FY 1982.

General Counsel
FY 1982 Budget Plan

	Actual FY 1980		Estimate FY 1981		Estimate FY 1982		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Compensation and Benefits	3	$136,000	2	$125,369	2	$127,000	-	+$1,631
Travel/Transportation		6,000		6,500		6,000		- 500
Rents, Communications, Utilities		-		-		-		-
Printing		6,000		8,000		8,000		-
Other Services		1,000		2,000		2,000		-
Supplies/Equipment		7,000		5,000		4,000		- 1,000
Total	3	156,000	2	146,869	2	147,000	-	+ 131

Justification
Office of Resource Management
FY 1982 Budget Request

Major Goals

The goal of the Office of Resource Management is to provide administrative and financial support services to all programs of the U.S. Metric Board in a manner which is consistent with Federal statutes, regulations and procedures of the Congress, the Office of Management and Budget, and the Office of Personnel Management.

The Office of Resource Management deals in the five basic areas of administration: Finance, Personnel, Procurement, Mail, and Building Services. The office is staffed by three full-time professionals, two full-time clericals and two part-time clericals; there is one additional employee serving all Board and Staff members who, for purposes of supervision, has been placed in the Office of Resource Management.

During FY 1981 the resources of this office will be dedicated to completing the installation of an approved Agency Accounting System. The Office is meeting its responsibilities in the financial management area but has fallen below expectations in other areas of administration because of personnel reductions.

Anticipated Accomplishments

The major effort of this office will be directed toward implementing personnel procedures to bring the agency into full compliance with the provisions of the Civil Service Reform Act.

Although no increase in permanent positions is requested for this office, it is anticipated that $14,509 additional funding is needed to convert 2 staff members currently serving in a part-time capacity to full-time temporary status. to annualize 1 conversion in FY 1981 from part-time to full-time status and to provide for within-grade increases and promotions.

Funds for the agency's general administrative costs are centralized in an operating budget controlled in the Office of Resource Management. An increase in funding of $40,000 will be required to annualize the rental costs for permanent office space acquired from GSA in FY 1981; an increase of $21,400 is also needed for additional supplies and equipment but an offsetting decrease will occur in the category "other services" resulting from one-time costs in FY 1981 related to the move to permanent quarters. $15,000 in additional funds will be needed for rental of a computer terminal, key punch equipment and a printer to support the Agency's new accounting system which will be approved by GAO and fully operational in 1982.

Resource Management
FY 1982 Budget Plan

	Actual FY 1980		Estimate FY 1981		Estimate FY 1982		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Compensation and Benefits	5	$152,590	6	$207,996	6	$222,505	-	+$14,509
Travel/Transportation		3,300		2,500		3,000		+ 500
Rents, Communications, Utilities		-		5,000		5,000		-
Printing		-		1,000		1,000		-
Other Services		1,600		1,600		1,000		- 600
Supplies/Equipment		1,000		2,000		2,000		-
Total	5	158,490	6	220,096	6	234,505	-	+ 14,409

Agency Support Costs
FY 1982 - Object Class (Combined)

	Actual FY 1980		Estimate FY 1981		Estimate FY 1982		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Compensation and Benefits	-	$ -	-	$27,500	-	$27,500	-	$ -
Travel/Transportation		4,500		3,000		3,000		-
SLUC		66,000		149,000		189,000		+40,000 1/
Rents, Communications, Utilities		72,800		56,300		69,300		+15,000
Printing		1,000		13,700		15,700		+ 2,000
Other Services		89,800		153,875		122,298		-31,577
Supplies/Equipment		15,700		18,600		40,000		+21,400
Total	-	249,800	-	419,975	-	466,798	-	+46,823

1/ Annualization of SLUC payments resulting from move to permanent quarters.

Summary
Legal and Resource Management
FY 1982 Budget Plan

	Actual FY 1980		Estimate FY 1981		Estimate FY 1982		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Compensation and Benefits	8	$288,590	8	$360,865	8	$377,005		+$16,140
Travel/Transportation		13,800		12,000		12,000		-
SLUC		66,000		149,000		189,000		+ 40,000 1/
Rents, Communications, Utilities		72,800		59,300		74,300		+ 15,000
Printing		7,000		22,700		24,700		+ 2,000
Other Services		92,400		157,475		125,298		- 32,177
Supplies/Equipment		23,700		25,600		46,000		+ 20,400
Total	8	564,290	8	786,940	8	848,303		+ 61,363

1/ Annualization of rent resulting from acquisition of permanent office space in FY 1981.

Questions Submitted by Senator Hollings

QUESTION:

On December 31, 1980, 5 of the 36 positions currently authorized for the Board were filled. How many are now filled?

ANSWER:

On December 31, this Agency had five vacancies. The Congress authorized a FTP ceiling of 36 positions but a freeze by former President Carter prohibited the filling of 5 positions.

QUESTION:

In what offices are there vacant position?

ANSWER:

The revised position ceiling authorized by OMB for FY 1981 is 34 full-time permanent positions. The on-board strength on February 28 was 31 positions. There is one vacant position in each of the following offices; Resource Management, Research Coordination & Planning and Public Awareness and Education. All of there positions will be filled by April 1, 1981.

QUESTION:

In view of the vacancies, does the Board still require a $71,000 supplemental in 1981?

ANSWER:

It is our understanding that the Office of Management and Budget is not planning to forward a supplemental budget request for the FY 1981 pay raise. This Agency's budget justifications reflect that change; the $71,000 has not been included in the request.

QUESTION:

How much of the 1982 increase of $482,000 relates to the 4 new positions?

ANSWER:

This Agency is requesting 3 new positions for the Public Awareness and Education Program. $78,000 is requested to support these new positions.

OFFICE OF GENERAL COUNSEL

QUESTION:

Why is it necessary for the Board to have both a General Counsel and an attorney?

ANSWER:

The Office of General Counsel is presently staffed by the General Counsel and one attorney to assist him. Their duties can be generally categorized as follows:

-- Public sector--including keeping current on metric legal activities of Federal agencies and state and local governments and responding to any requests for assistance; maintaining liaison with state attorneys general and legislative councils regarding metric legal matters; maintaining liaison with the ICMP, ABA and ANMC on metric legal matters; and providing support to public sector programs of other Board directorates.

-- Private sector--including maintaining contact with the DOJ and FTC on antitrust developments affecting metric conversion planning activities and preparing antitrust guidelines for conversion planners; keeping current on metric legal activities in the private sector; reacting to requests for assistance in the private sector; and providing support for private sector programs of other Board directorates.

-- Agency counsel--including Freedom of Information, Privacy, Federal Advisory Committee and Sunshine Acts advice; advice on legal aspects of travel, personnel actions, appointments, gifts and procurement; acting as agency ethics officer and Board parliamentarian; and providing all other legal support required.

During the last fiscal year, the report on the need for an effective structural conversion mechanism mandated by Congress as well as a publication on the antitrust implications of conversion planning were produced by OGC.

QUESTION:

Since the Board didn't prepare its budget in the format prescribed on page 8 of the report accompanying the 1981 bill it is necessary to ask a lot of questions that could have been ascertainable in the justification. For instance, how much of the 1982 increase of $482,000 is required to maintain the 1981 program level?

ANSWER:

The instructions received from the Senate sub-Committee staff dated January 12 made no reference to the guidance in the Senate report. It was assumed therefore that no changes in the presentation materials were necessary this year.

In FY 1982 $143,000 will be required to maintain the FY 1981 program.

QUESTION:

How much is available in 1981 for contracts and what is the increase proposed for contracts in 1982?

ANSWER:

	FY 1981	Increase FY 1982	1982 Total Program
Research, Coordination & Planning	$200,000	+$200,000	$400,000
Public Awareness & Education	65,000	+ 100,000	165,000
	$265,000	+$300,000	$565,000

All contracts above $10,000 are let competitively.

QUESTION:

Why does the Board require an additional $30,000 in equipment in 1982?

ANSWER:

As shown in the object class schedule on page 3 of the Reagan Budget the Board is requesting a total of $9,000 in the FY 1982; the funds will be used

for typewriters, calculators, and similar equipment scheduled for replacement in FY 1982.

9. QUESTION:

What causes the amount for supplies to nearly double in 1982 over the amount allocated in 1981?

ANSWER:

The request of $66,000 in FY 1982 for supplies reflects an increase of $21,000 over FY 1981. The Board will replace all stationery supplies in FY 1982 which will reflect the Agency's change of address.

10. QUESTION:

Why didn't the Board use the prescribed format so we could have the information requested in the preceding question?

ANSWER:

See response to question No. 6 above.

11. QUESTION:

Has the Metric Board moved to new quarters?

ANSWER:

Yes. On January 12, the Board moved to 1600 Wilson Boulevard. The Board notified the Sub-Committee of the proposed move in December 1980.

TENURE OF METRIC BOARD

QUESTION:

In each year of the Board's existence it has requested a significant increase over the previous year's budget. In the Board's opinion, how many people does the Board need and what size budget would it require to fully carry out is responsibilities? When do you estimate there will no longer be a need for a U.S. Metric Board?

ANSWER:

When PL 94-168 was enacted in 1975, the Board believed it could accomplish its mission in 10 years. With a staff of approximately 100 full-time permanent positions and a budget of $9 million we still believe this time table is realistic.

CANADIAN GOVERNMENT METRIC STUDY

QUESTION:

The Canadian Government (Metric Overview Board, Ministry of State for Small Business) conducted a study on metric conversion progress. It is reported that the results of this study showed that metric conversion

has not been beneficial to Canada. The report on the study was expected to be issued late last year. Can you comment on that study and furnish the Committee with copies of the study?

ANSWER:

A study was initiated by the Clark Government in Canada. The report was classified by the Clark Government and was never released. The Trudeau Government has reaffirmed Canada's commitment to metric conversion as indicated in the attached press release dated December 23, 1980.

December 23, 1980

METRIC CONVERSION OF SCALES IN RETAIL

FOOD STORES TO RECOMMENCE 1 JANUARY 1982

The Honourable Charles Lapointe, Minister of State (Small Businesses) and the Honourable André Ouellet, Minister of Consumer and Corporate Affairs, announced today that metric conversion of retail food scales in major cities across Canada will commence on 1 January 1982.

In making this announcement the Ministers confirmed the Canadian Government's commitment to the policy that a single coherent measurement system based on metric units should come to be used for all measurement purposes required under legislation, and generally be accepted for all measurement purposes.

This further delay of one year, allows for ample notice to the industry and will permit the Canadian public to become more familiar with the metric system.

Mr. Lapointe, recognizing that some people may be uneasy about the conversion, stated that the procedures which will be followed should ensure a smooth and orderly conversion which will minimize cost and confusion for all Canadians.

Mr. Lapointe emphasized that this is the last major metric conversion event to affect th general public.

Consumer and Corporate Affairs Canada will publish revised regulations under the authority of the Weights and Measures Act as amended by Parliament through the Statute Law (Metric Conversion) Amendment Act of 1976. These regulations, governing the weighing, selling and advertising of foods that are individually weighed in stores, will ensure that trade practices unfair to consumers as well as retailers are avoided.

The Ministers emphasized that, to help shoppers compare prices during the transition period, prices per pound as well as by the kilogram or 100 g will be shown and retailers can continue this practice until the end of the conversion period for each geographical district.

They further assured consumers that if they face apparent price discrepancies during the conversion and these cannot be resolved by the store manager, they will have an established recourse to bring their complaints to the local Consumer Service Office of Consumer and Corporate Affairs Canada.

Mr. Lapointe stated that metric conversion depends on the effective support of thousands of industry volunteers who plan, schedule, and implement it. Considerable progress based on industry's commitment to sound planning and scheduling has already been achieved in the implementation of metric conversion. As a result, in many consumer areas metric conversion has already taken place successfully, such as in weather information, road signs, sale of gasoline, soft drinks, wines, textiles and most food items.

The revised schedules for conversion of scales in retail food stores will be implemented across Canada over the two-year period ending in December 1983.

UNITED KINGDOM'S EXPERIENCE RELEVENT TO U. S. CONVERSION

QUESTION:

The United Kingdom for all intents and purposes has given up on further metrication after 15 years by eliminating its Metric Board and stating it will not issue any more compulsory orders to go metric. There has been a lot of strong public opposition particularly when conversions were attempted at the retail level and the general public was directly affected. Since the United Kingdom's conversion has many similarities to such efforts in the United States, is it not realistic to believe we may end up the same way?

ANSWER:

The attached excerpt from the Final Report of the Metrication Board, 1980, summarizes the situation in the United Kingdom.

Because of the substantial dissimilarities between the United Kingdom and the United States it is difficult to draw meaningful parallels. The approach from the outset in the United States has been voluntary and only time will tell how effective this approach is. However, the experience of the United Kingdom should be weighed seriously.

CHAPTER 1: REVIEW

1.1 The first move for a change to metric for all purposes of trade was made by the Federation of British Industries (now the Confederation of British Industry) in 1965 when it informed the Government that the large majority of its members favoured this course. In response the Government stated that over half British exports went to metric countries, and that it was desirable that British industry should adopt metric units, sector by sector, until the system could become the primary system of weights and measures for the country as a whole. The Government also stated that it hoped that most of industry would have made the change by 1975, but recognised that some sectors might aim at an earlier or later date.

1.2 Today metric units are used in many important areas of British life - including education; agriculture; construction; industrial materials; much of manufacturing; the wholesaling of petrol, milk, cheese and textiles; fatstock markets and many port fish auctions; nearly all the principal prepacked foods; posts and telecommunications; most freight and customs tariffs; all new and revised Ordnance Survey maps; and athletics. Nevertheless, taken as a whole, Britain is far from being wholly metric.

1.3 Certainly there has been hostility to metrication. Against metrication it has been argued that:

- traditional weights and measures should be kept as part of the national heritage;
- the metric system is difficult to understand and would confuse people;

- some metric units are less convenient and practical than those they replace;

- it would increase costs;

- the EEC is to blame for the changeover.

1.4 The truth of the matter is that:

- metrication does not involve rewriting English literature which in any case already uses many units strange to us today;

- metric is much the simpler system;

- virtually all the rest of the world is committed to metric;

- Britain has to change to metric in order to succeed in international trade;

- the British Government's decision of 1965 in favour of the metric system was taken well before Britain joined the EEC in 1973.

1.5 When metrication has actually happened - as, for example, in the case of prepacked foods like margarine and sugar - the great majority of people have taken it in their stride. The Price Commission found that metrication had not resulted in increases in retail unit prices, and the Board's monitoring of retail prices since the summer of 1979 onwards points to the same general conclusion. No country has been able to calculate the costs of going metric but all agree that the continuing benefits for the future far outweigh them. A carefully timed and planned changeover can bring substantial financial savings and benefits to individual firms.

1.6 The misapprehensions might have been overcome if the Board had been able to campaign in favour of the adoption of the metric system. Our terms of reference did not permit us to do this. This gap was not filled by successive Governments with the result that no one made a sustained argument for metrication.

1.7 From the beginning a principal feature of Goverment policy was that metrication should be voluntary, that no compulsory powers would be sought, and that the Metrication Board would be advisory only. The vast majority of the metric advances of the past fifteen years have in fact resulted from voluntary decisions and actions. The Metrication Board has helped with co-ordination, publicity and consumer information.

1.8 The voluntary approach, that is change not backed by legislation, has been much less effective in retailing than in other sectors. The report 'Metrication in the Retail Trade', which we submitted to the Secretary of State for Prices and Consumer Protection in 1974, advised that unless legal cut-off dates were established (that is, dates after which the use of imperial units would no longer be legal) some retailers would not go metric and these would deter others from doing so. This point was demonstrated in practice when fabric and floor-covering retailers began a voluntary change in February 1975. Not all retailers changed: some who did claimed that they lost sales and then either reverted to selling in imperial or adopted dual measurements.

1.9 Teachers were among the first to recognise the simplicity, logical construction and educational benefits of the metric

system. Today, in GCE, SCE and CSE examination papers, metric units are the rule. But on leaving school many young people find themselves having to adapt to an economy which is partly imperial. Employers who still operate in the imperial system have to train recruits. Since complete elimination of imperial measurements from the economy is likely to take some years, pressure may be expected for courses and examinations to be made to reflect both systems. In 1974 the Department of Education and Science issued advice (which still stands) to schools that teaching should be conducted principally in metric terms while maintaining general familiarity with imperial units.

1.10 Thus while most sectors are metric or largely metric two major sectors are not: retailing of weighed out foods and many sales by length, volume or area; and speed limits and road distance, height and weight signs.

1.11 Fifteen years ago the Government of the day accepted that the country should go metric in the interest of Britain's survival in world markets. In the light of economic performance and with the worldwide advance of metrication, this argument is even stronger today. There are no legislative barriers to the change, yet much of British industry is said to work at reduced efficiency because of dual standards, double stockholding, conversion problems and waste and mistakes on the shop floor. Many of the opportunities to rationalise specifications are being missed; and failure of industry to metricate fully, except to the extent that imperial production is necessary for spares and replacements for existing equipment, reduces efficiency and affects sales.

1.12 As long ago as 1968 the Government-appointed Standing Joint Committee on Metrication, representing management, trade unions and Government, reported that manufacturing industry could make the change efficiently and economically only if the economy as a whole moved in the same direction on a broadly similar time-scale and in an orderly way. Industry attaches importance to the early completion of the metric programme throughout the economy as a whole. In June 1979 the Confederation of British Industry, while recognising that industry itself has a part to play in bringing this about, commented 'there is no room for two measurement systems in an efficient trading nation - one for the housewife and one for the businessman' .... 'at the moment we are in the worst of both worlds'.

1.13 Most organisations representing consumers believe that it would be best for shoppers for the retail change to be total, speedy and orderly. A long transition would prolong confusion and remove from shoppers the safeguard of a single and universally accepted system of weights and measures. Honest traders could be penalised while those prepared to exploit areas of uncertainty and confusion could stand to gain.

1.14 In 1977, after the Weights and Measures Act of 1976 had made legal cut-off dates possible, we held extensive discussions with consumer organisations and those concerned with retailing weighed and measured out goods. We achieved agreement on programmes for metricating retail sales of all these goods by the end of 1981; a principal requirement was that the programmes should be backed by statutory Orders giving legal status to the agreed cut-off dates. Draft Orders were laid before Parliament in March 1978 but were withdrawn in May. At this point the Government of the day asked the Board to try once again to see whether acceptable voluntary programmes could be devised. The Board therefore opened fresh discussions with the retail trade to see whether this was possible.

1.15 We submitted our 'Report on the Change to Metric in the Retail Trade' to the Minister of State for Consumer Affairs in October 1979. Our major finding was that retailers of weighed out foods and measured out goods totally reject the idea of voluntary metrication in the near future, except petrol for which there is no economic alternative to metrication (see page 16). They pointed out that as yet there are no commercial advantages to them in going metric. The retail trade is highly competitive and even if all trade association members changed, many non-members would continue to trade in imperial in order to gain an unfair commercial advantage. The majority of customers do not yet favour the metric system and metric prices appear to be higher than imperial prices because, in general, round metric quantities are larger than imperial. Although unenthusiastic about the adoption of the metric system, retailers seemed willing to support an early, orderly, time-tabled programme provided it is backed by legislation.

1.16 However, in November 1979 the Government announced that since it had no plans for further cut-off Orders there was very limited scope for the Board's activities and no further appointments to the Board would be made after current terms expired on 30 April 1980. Government policy is that future metrication should proceed by voluntary programmes and Ministers have indicated that they favour such voluntary action to achieve an orderly transition.

Conclusion

1.17 Industry, especially engineering, says that the rate of change to metric working is greatly affected by progress in other sectors, especially retail trade. The phasing out of imperial units for retail sales would quickly bring about the use of metric units in everyday life and powerfully influence the changeover in industry.

1.18 Many prepacked goods, especially the main shopping basket foods, and some measured out goods are sold in metric quantities in the High Street. Most organisations representing consumers believe it would be best for shoppers if the change were total, speedy and orderly.

1.19 Trade organisations representing retailers of measured out and weighed out goods, especially meat, fish, fruit and vegetables, are not prepared to recommend a voluntary change to selling in metric in the near future. Although unenthusiastic about the adoption of the metric system, all seem willing to support an early, orderly, change provided there is a fixed statutory timetable.

1.20 Government policy is that future metrication should proceed by voluntary programmes of industry, trade, retailers, firms, associations and individuals. Ministers have indicated that this is the best method of achieving an orderly transition.

1.21 The Board believe that the essential prerequisite to retail metrication being completed voluntarily in the next few years is a change in the public's attitude towards the adoption of the metric system. Our surveys show that a majority of people are not in favour of changing, although over eighty per cent of them believe they would be able to cope with the change when they had to.

1.22 This necessary change in attitude can be achieved only by a successful information programme explaining why the country is going metric and the adverse effect on the economy of not completing the change. The alternatives to changing public opinion in favour of metrication, which

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would remove retailers' fears about changing voluntarily, are: -

1) a timetabled retail programme, backed by the minimum legislation necessary, and agreed in advance with retailers, consumers and other interests;

or

2) continuing with the existing mixed system until such time as the retail trade see commercial benefits in 'going metric'.

1.23 The Board consider that an early and orderly completion of the change to metric would be in the best interests of the economy and thus the consumer, and we urge everyone to press ahead as quickly as possible.

SMALL BUSINESS

QUESTION

Dr. Travis, being one of the two members of the Board representing small business, I would like to hear your views on how metric conversions will affect small businesses in this country. I see few benefits but many costs.

Do you anticipate that small businesses may need some assistance from the Federal Government?

ANSWER

Mr. Chairman, it is far too early to determine whether or not the benefits of metric conversion will outweigh the costs as it relates to the small business community. This is because conversion in this country is voluntary and not mandated.

I would call to the committee's attention, however, the Metric Board recently completed the first phase of a study entitled, "Survey of Small Businesses: Issues in Metric Planning and Conversion," which concluded, among other things, that

(1) 23% of those surveyed manufacture and/or supply at least one metric product, and

(2) 65% of those firms surveyed found the cost of metric products approximately the same as customary measured products.

As for the need of small business to seek assistance from the Federal government, this study concludes that at this time there is no need for financial assistance from the Federal government. The study did conclude, however, the need for the Metric Board to provide educational assistance to the small business community on the voluntary nature of the Metric Conversion Act, and information that will assist the small business community should they choose to convert.

NEED FOR FURTHER LEGISLATION

QUESTION:

The Board plans to reassess the voluntary program of metrication and the requirements, if any, for legislative amendments. Can you state unequivocally that there will not be a need for any type of mandatory conversion?

It seems in other countries such as the United Kingdom, Australia, and Canada they had to mandate some parts of the conversion process and some of that had to be rescinded. Doesn't it seem the Board is heading toward this same pitfall where a forced conversion is hidden under a voluntary cover?

ANSWER:

We believe that any conversions to the metric system should occur in the marketplace in a free economy. The present voluntary system of change will insure that any conversions that occur will be evolutionary in nature. Absent unforeseen events, we see no need to change the present law which authorizes both the customary and metric systems to concurrently exist and be used. New legislation may become necessary if the metric system becomes predominant; however, that circumstance is not predicted in the near future.

PROMOTION CAMPAIGN DOES NOT MENTION CONVERSION IS VOLUNTARY

QUESTION:

The Board states that through its Public Awareness and Education activity the Board attempts to provide the public with basic information on metrics. From what has appeared on its TV spots, including the one on gas pumps, it appears the Board is promoting metric conversion. Nowhere in these products does the Board mention conversion is voluntary and that Americans do not have to convert. How do you plan to correct this situation?

ANSWER:

In all of its public information activities the Board attempts to provide useful and factual information which is unbiased. The gas pump TV spots, which were produced in response to a public education need created by an actual conversion in the marketplace, were carefully screened and reviewed by the Board's PAE committee and the Board before release to avoid any suggestion that we endorse such conversion. The material expresses no preference for metric dispensing. It is completely educational and designed to provide a public service to motorists who need comparative information to make a decision in the marketplace. In it public information and educational activities the Board continues to emphasize the voluntary nature of metric conversion.

INEVITABILITY SYNDROME

QUESTION:

As stated in your budget submission, the Board's role as a neutral party will be preserved. The Board and its associates seem to continue to point out that the United States is the only large Nation that is not metric and even provided data (in the 1979 budget hearings) on this along with such statements (in response to Subcommittee questions) as "The alternative to voluntary conversion, of course, will be a government mandate to complete

a difficult and time-consuming process within a two or three year period." Does the Board really believe it promotes an image of neutrality with these and other actions?

Note: Other Countries that are not metric: Burma
Brunei
South Yemen

ANSWER:

Sec. 2(2) of Act states this fact:

The Board adheres assiduously to it position of neutrality, which was establish by a Board policy action (San Francisco resolution), reiterated in the Chairman's letter in our 1979 Annual Report to Congress, in our press releases and other public information materials describing the Board's role and mission. With regard to the statement that the U.S. is the only major industralized nation that has not made a metric commitment, the authority for this factual statement is found in Section 2(2) of the Metric Conversion Act, which states: "this Nation today is the only industrially developed nation which has not established a national policy of committing itself and taking steps to facilitate conversion to the metric system."

PUBLIC AWARENESS AND EDUCATION: SHOULD CHOICE BE MENTIONED?

QUESTION:

In the Office of Public Awareness and Education you state the main emphasis in 1982 will be to educate the public on the increasing change over to metric in various businesses and industries throughout the Nation. The Board intends to further its education efforts through a series of public service announcements directed toward the consumer. An increase of $184,000 is requested for this Office. Do you have any objection with a requirement that all Board-supported material contain a mandatory statement that "metric conversion is voluntary which means one has the choice to convert or not to convert"?

What about a statement that metric conversion is not inevitable?

ANSWER:

While the Board continues as a matter of law and policy to stress the voluntary nature of conversion we believe the inclusion of a mandatory statement would be inappropriate inasmuch as a free choice does not always exist. For example, some consumer products, including wine and liquors, cameras and photographic supplies, are available only in hard metric sizes. Where appropriate the Board always emphasizes choice to convert or not is available and willingly stands accountable for its support of this policy in both the letter and spirit of the law.

With regard to the "inevitability" of metric conversion, the Board deals in facts and does not engage in opinion. Our position as a Board is that inasmuch as conversion is voluntary in this country no one can reasonably predict whether or when the United States will go metric.

In our first annual report to Congress, we stated: "Because conversion is occurring voluntarily on a company-by-company and industry-by-industry basis, it is difficult to predict when the metric system might become the predominant means of measurement in the U.S. It may take 10 years, or much longer, or it may never occur on a completely voluntary basis."

PUBLIC CONFUSION: BECAUSE THEY DON'T WANT TO CONVERT

QUESTION:

In your budget request, when you state that confusion apparently continues to exist in the minds of many Americans on metric conversion, it seems like you are saying that if Americans are not for conversion they are confused. Just exactly how do you view this confusion? If people don't want anything to do with conversion, are they confused?

ANSWER:

It is not our position, nor do we imply that those who resist or oppose metric conversion are confused. The "confusion" referred to in our budget request relates to the widespread public confusion that exists as to whether conversion is mandatory or voluntary. An apparently large segment of the population is under the misimpression that Congress made conversion mandatory and set a deadline for it, when it passed PL 94-168. This public misunderstanding was noted in the GAO report reference to the "inevitability syndrome."

MEDIA BLITZ DOES NOT SAY CONVERSION IS VOLUNTARY

QUESTION:

You state throughout your submission that your objective is to inform people that conversion is voluntary, but do you really say it or imply it means voluntary rather than mandatory? Of all your material, publications, TV tapes, etc., on metric conversion is voluntary and that the choice is to convert or not to convert without suggesting or implying that nonconversion is a wrong decision? Provide the Subcommittee with supporting documents.

ANSWER:

All of our public information materials - including our official annual report to the Congress - stress the voluntary nature of metric conversion. Enclosed are materials, including our last annual report, press releases, radio tapes, and special publications (Metric Case Histories) which document the Board's adherence to a position of impartiality.

DEFINITION OF THE "NEW COMPLEXITY"

QUESTION:

You state that it has become clear that the issues are more complex than originally anticipated when P.L. 94-168 was enacted and use this as support for more money. Since a number of the Board members and the Executive Director were involved in metric conversion long before the Act was passed and the 1971 NBS detailed metric report did not make it out to be simple, explain what you mean and how this "new complexity" will affect the life of the Board and conversion estimates.

ANSWER:

At the time of the debates on the Metric Conversion Act of 1975, all involved parties envisioned that metric conversion would occur by industry sector as a result of sector planning. Although the legislation that resulted included the voluntary change system, all parties continued to expect that industry sectors would voluntarily produce sector

conversion plans. This process was predicted in prior testimony by U.S. Metric Board officials before Congressional committees.

Experience has now shown that, although the use of the metric system is increasing at a substantial rate, conversions are more likely to occur in individual product lines and by single company decision rather than by sector decisions. For example, only a portion of the soft drink industry containers were converted to metric and only some of the retail gasoline dispensing pumps have been converted. In each case, the converted portion of the industry exists side-by-side with the customary portion. This divergence of conversion goals and methods results in great complexity in the coordination, understanding and analysis of private sector conversion efforts. That is what was meant by the term "new complexity."

INTERAGENCY COMMITTEE ON METRIC POLICY

QUESTION:

It has been reported that the Interagency Committee on Metric Policy, a committee of official representatives from the various Federal departments and agencies, meet to discuss ways to implement increased metric usage and conversion through Government. This Interagency Committee operates with Metric Board support but outside the Board's jurisdiction, making this group virtually unaccountable to the agencies involved or the Congress. The Interagency Committee issued regulations in 1980 instructing all Federal agencies to adopt and promote the use of metric measurements in their own activities, in Federal procurement and contracting, etc. The Departments of Commerce, Agriculture, and Transportation have already taken such action. These actions, voluntary by the Interagency Committee and the Federal departments and administrations, become mandatory on the general public -- the taxpayers and the voters of this country. What actions do you intend to take to prevent these Federal entities from this quasi-mandatory conversion?

ANSWER:

The ICMP was chartered by the U.S. Metric Board, operates under U.S. Metric Board auspices and is chaired by the Chairman of the U.S. Metric Board.

The ICMP issued proposed guidelines (not regulations) in 1980. Much comment and debate was engendered thereby and taken into account before final guidelines were developed by the ICMP and endorsed by the Board. The final guidelines eliminated a perceived pro-metric bias of the proposed guidelines and generally more closely follow the philosophy of the Metric Conversion Act of 1975. The final guidelines are designed to encourage each Federal agency to be ready to respond to private sector metric initiatives but to generate internal metric initiatives only when such would:

-- Not unduly restrict competition,

-- Be in accord with existing legal authority, and

-- Be in the national interest.

The ICMP is thought to be an important control on possible unwarranted unilateral conversion activities by agencies and is an excellent mechanism for comment and coordination on metric matters between agencies.

METRIC CONVERSION: HOW DO CONSUMERS BENEFITS?

QUESTION:

In December 1980, it was reported that no consensus has been reached between the petroleum industry and related government and trade organizations over whether to use 3.785 or 3.784 as the conversion factor in converting gallons to liters at gasoline pumps. Further, these groups have been unable to agree upon the method of rounding the liter gasoline price to reach an acceptable number of significant digits. Thus, there are currently up to four possible liter prices that could be equated to any one given gallon price, a fact that could produce confusion at the retail level. On top of this confusion, the Environmental Protection Agency will begin reporting fuel economy in miles per liter along with miles per gallon. The Department of Transportation has tire pressures in metric as well as customary. Purchasers of metric tires are not informed that they should use three pounds more pressure than their old customary tires for large sizes.

How can anyone claim that customers benefit from metric conversion when there is this confusion? Where is the benefit?

These activities, along with other Federal activity by such Departments as Commerce and Agriculture, give one the impression that the Federal Government is pushing conversion when it is supposed to be voluntary. A voluntary action by a Federal entity makes it mandatory on the public. What is the Board doing about this?

ANSWER:

The assertion that as of December 1980, no consensus had been reached over how to convert gallon prices to liter prices at the gasoline pump fails to indicate that the consensus process was ongoing. Since private sector planning groups had not agreed upon a uniform conversion practice and since no federal agency (including the Metric Board) has authority to mandate such uniformity, it was up to the Metric Board to recognize the inconsistencies and initiate a process to achieve uniformity. In our pluralistic society such consensus processes are time consuming. If it were not for the Board's initiative and efforts, we would be much further from uniformity at this time. Meanwhile as far as we know the lack of consensus has not produced any consumer complaints. The Environmental Protection Agency does not presently plan to report fuel consumption in miles per liter in addition to miles per gallon data. When they do so, we presume, it will be to accommodate those consumers who purchase gasoline by the liter; for them the miles per liter data will be helpful rather than confusing.

P-METRIC RADIAL TIRES

The maximum inflation pressure displayed on the sidewalls of P-metric tires is 35 psi vs 32 psi for the old Alpha-Numeric tires. New cars now delivered with P-metric radial tires display the recommended inflation pressures on a sticker on the glove box door and in the owners manual. If P-metric tires are sold for an older car, the dealer uses conversion charts to select the proper tire. the manufacturers have instructed their dealers to advise customers to add 3 psi to the original inflation pressure recommended by the car manufacturer for alpha-numeric tires.

The benefits to consumers are:

1. The P-metric radial tire is a tire of improved construction which the manufacturers claim provides longer wear, reduced rolling resistance and improved fuel economy.

2. Smaller, lighter economy cars required smaller, lower load capacity tires which were below load range "A" of the alpha numeric size designation system. The P-metric system was devised through negotiation with manufacturers from other countries to accommodate the need for a new size designation system. The new international system is a better and rational system of tire sizes that covers the new sizes required by the automobile manufacturers. The new size designation system has reduced the overlap and number of different tire sizes previously used. The benefit to consumers is that manufacturing set-up and inventory costs should be lower and dealers will not have to pass on to consumers the higher cost of manufacturing and inventoring an excessive range of tire sizes.

FEDERAL AGENCY METRIC ACTIVITY

The Interagency Committee on Metric Policy recently approved the "Metric Conversion Policy for Federal Agencies" and the supporting "Federal Agency Guidelines for Implementation of Metric Conversion Policy." The U.S. Metric Board has also approved these documents. Basically, the policy says that "Federal Agencies shall conduct their metrication activities in a coordinated manner consistent with the objectives of the Metric Conversion Act and compatible with metric conversion trends in the nation . . . Federal Agencies shall encourage and support an environment which can accommodate metrication and when taking initiatives, will act with consideration for metrication in the state and local government and the private sector."

With regard to the Department of Agriculture, their metric policy contains this statement:

> "The metric system shall be used for the Department facilities and engineering activities, and in specifications for procurement of all equipment, supplies and services particularly in design of new equipment, products and materials. It shall be phased in and used as availability emerges in industry or commerce or when determined to be in the best interests of the Department."

The stated goal of the Department of Commerce is: "to convert to metric usage for all of its appropriate activities by 1985. . . . The conversion to metric usage in all of these activities, however, will be subject to budgetary restrictions and the overall progress of metric conversion in the United States."

There are no efforts of either Commerce or Agriculture of which we are aware which violates the letter or spirit of the Federal Policy and Guidelines or the Metric Conversion Act.

The U.S. Metric Board does monitor Federal metrication initiatives. It is one of the Board's roles to speak out on metrication initiatives by Agencies which appear inconsistant with either the Metric Conversion Act or the Federal Metric Policy and Guidelines.

It must be remembered that while the U.S. Metric Board will act to discourage questionable metric initiatives by any Federal Agency directly or through the USMB chartered ICMP, the Congress gave the USMB no direct control over any agency or organization, public or private.

CONSUMER IMPACT

QUESTION:

In your budget submission, you state the Board has attempted to assess the future of metric conversion on the individual consumer. What effect will it have on consumers?

Will they react much like consumers have in the United Kingdom and possibly in Canada? and if not, why not?

According to the GAO, consumers would be heavily impacted particularly by higher costs, as demonstrated by the alcoholic beverage industry conversion, and very little benefits. For example, how would the people who cook, male and female, benefit by metric cooking, particularly if they have to buy metric equipment and cookbooks?

You also state that you intend through your education activity to help individual consumers understand how metric conversion will affect their lives so they may make educated decisions in the marketplace. Will you point out the problems and disadvantages of conversion or only what you perceive as the benefits?

Proposed responses to queries re: Consumer-related activities of the USMB.

The statement in the Board's Fiscal Year 1982 Budget estimates submission to Congress, March 10, 1981, about the Board's attempts to assess the future impact of metric conversion on the individual consumer refers to continuing, activities of the Board and actions planned within the FY 82 proposed budget. The continuing actions include the public forums, accompanying USMB bi-monthly meetings held in various cities throughout the United States. During the bi-monthly meetings, formal presentations and informal comments are scheduled and encouraged from local business people and consumers. The public record of the bi-monthly meetings indicates some misunderstandings about the intent and provisions of the Metric Conversion Act of 1975, and a need for additional information and education for consumers. Other continuing actions to assess the effects of conversion on consumers include the monitoring of metric items in the press and particularly responses to the public service announcements of the Board, such as the recent explanatory announcements about the voluntary changeover of some service stations to the selling of gasoline by the liter. Additionally, all correspondence from consumers, including comments on marketplace activity and requests for information, is monitored to help define consumer attitudes and perceptions, and to guide both the Public Awareness and Education, and Research efforts of the Board. Participation in National Metric Week, a nationwide, non advocacy, consumer education program, is another example of the Board's consumer oriented actions.

Another action, just initiated is a knowledge and attitude survey of consumers about distilled spirits containers. The survey is part of a case study of the conversion of the distilled spirits industry, an example of an industry-initiated conversion of a federally regulated consumer product which pre-dated the USMB. The results of the survey will be available for analysis this summer.

Consumers in the United States may not react the same way as consumers in the United Kingdom and Canada for two reasons. First, the conversion process in both those countries, as well as in Australia, was organized and encouraged by their metric Boards. That is, there was a national commitment to conversion, with some specification of time frames and deadlines in some instances.

The second reason why U.S. consumers may not react as Canadian or British consumers have is that through the USMB public forums, research and other activities as the Board will try to understand the consumers' concerns and needs and integrate those concerns and needs into our private and public sector conversion planning and coordination activities.

At the time of the GAO investigation, little data on costs of conversion existed. The GAO report represents a distillation of opinions elicited from industry representatives and generalized observations of market actions (e.g., the distilled spirits business). The price increases accompanying the distilled spirits containers conversion are claimed by the distilled spirits industry to be long-delayed normal increases occasioned by increased costs of materials and unrelated to conversion. Evidence now available from our case study of the distilled spirits container conversion supports that position; the conversion itself was of minimal cost and there was essentially no cost to pass on to the consumers. Further more underway on small business conversions supports the emerging thesis that the costs of planned conversions are extremely small. Hard data supporting the thesis will be forthcoming before the end of the present fiscal year. The information represents direct contacts with approximately 500 firms covering about 80 percent of the Standard Industrial Classification codes.

The only "metric equipment" necessary for cooking are measuring devices (e.g., cups and spoons). As new measuring products are manufactured, the market place itself has voluntarily decided to dual-label the devices. So cooks, male and female, when they replace measuring devices, have the opportunity to purchase, at no increase in price except that occasioned by raised material costs and inflation, devices providing both customary and metric units. New cook books again reflecting marketplace actions, are being written in dual language, at no increase in cost to the consumer. (As a side point, it is noted that, contrary to the customary syste, the metric system uses unique names for volumetric (millimeters) and weight (grams) measures common to cooking. The customary system uses ounce for both, requiring the cooks to have specific knowledge of which "ounce" is meant--depending on the food stuff measured. For example, eight ounces of flour could be either one cup of flour (volumetric) or half a pound of flour (weight). It is only fortuitous (depending on density) that the two dimensions will result in the same quantity of flour).

Both the research and public education efforts are directed toward understanding the problems and disadvantages, as well as the benefits and economies, of conversion. As advantages and disadvantages are surfaced and clarified they are and will be emphasized in communications to the individual consumers as well as public agencies, private firms (principally through the associations channels), and the academic and research communities.

TRADE

NONCONVERSION: A TRADE BARRIER?

QUESTION:

The Board states that conversion can directly affect the productivity, improve the ability of U.S. companies to complete in metric markets and consequently contribute to improved economic conditions here at home. If this were a fact, every firm in the United States would have now converted, but they haven't, and for the most part don't seem to be pushing it. As pointed out by both NBS, and GAO, measurement has very little effect on trade and a company does not need the U.S. Metric Goard or

for that matter the Act itself to convert. How can conversion directly affect productivity? Doesn't nonconversion affect foreign firms' ability to import into the United States?

ANSWER:

When the form of the Metric Conversion Act was being debated, proponents of various forms of mandated conversion advanced the argument that such conversion would contribute to an improved ability of U.S. firms to compete in foreign markets. No such mandate was incorporated in the Act however, and its emphasis on voluntary conversion has shifted the trade question to whether industry or firm conversions will improve the position of those industries or firms in trade.

Several studies have looked at this issue. The earliest was the National Bureau of Standards study of 1971, some 4 years before the passage of the Metric Conversion Act. The results of this study were that the type of measurement units used in design and manufacture was the least important of 10 given factors in deterring or increasing trade; and if "the country and your firm" converted to metric, little gain in exports was seen over the next five years by the surveyed firms.

The Government Accounting Office performed a similar study in 1978 with substantially the same results as to units of design and manufacture being of little importance to the given factors in enhancing or deterring trade.

Studies performed at the US Metric Board have taken a somewhat different direction. Instead of comparing units of design with such factors as price, quality and technology, firms from the Fortune 1000 (U.S. Metric Board 1979 Survey of Selected Large U.S. Firms and Industries) and firms representative of small business (Survey of Small Businesses: Issues in Metric Planning and Conversion) were asked a variety of questions as to their metric activities such as conversion planning, metric production and export trade. It was found, for example that about 90% of the Fortune 1000 firms making some form of metric product have foreign sales, while among small businesses with exports, forty percent make some form of metric products. This is even more striking when compared with the average of 23 percent of all small businesses having metric products.

These findings suggest that even though a product cannot be exported on the basis of being metric alone, a lack of metric products could inhibit future growth in U.S. export trade. This international trade in goods and services has grown strongly in dollar terms in recent times and is now in the neighboorhood of $340 billion. Even in volume terms (1972 dollars) export growth was about 10% from 1979 to 1980. It is not known what portion of this growth will require additional metrication, but U.S. capability to provide metric goods (and services) will be a strong factor in holding and increasing our share of world trade.

Other factors influence the effects of metrication in trade. The U.S. government has become more involved in the promotion of trade, as have several states. The U.S. Department of Commerce is installing the Worldwide Information and Trade System (WITS), a computerized trade information network which will cover some 40 countries. Bills such as S.2718 and H.R. 7436 seek to encourage exports of goods and services by American industries

by promoting the formation of export trading companies. The U.S. has agreed to the new (GATT) Standards Code, calling for early notice of mandatory standards changes among GATT adherents. States, such as Massachusetts have established specialized agencies (e.g. MASSPORT) to assist business firms in developing overseas customers.

Such developments make it clear that while metrication may not push exports in and of itself, metrication will continue to grow in voluntary fashion under the influence of the growing importance of world trade to America's economy.

Productivity is affected by metrication in two ways. First, with regard to multi-national operations, the ability to design, manufacturer and distribute products made to one measurement system eliminates requirements for two systems for drawings, blueprints, instructions, and inventory systems. The elimination of the redundances affects the economics of engineering, and distributions systems production and hence productivity. Secondly, industries operating under complexities developed over time (e.g., construction and the bottling industry--with multitudinous sizes for individual product types such as distilled spirits, wine, and soft drinks) can frequently take advantage of opportunities for rationalization of sized and standardize on a simple preferred size series. Thus metrication can reduce operating costs for multinational firms but also may provide an opportunity to gain industry wide agreement on improvements measurement standards for products sold domestically as well as in overseas markets.

The successes of German and Japanese automobile sales in the United States is clear testimony to the fact that non-conversion, or maintenance of customary sizes, is no constraint on the ability of foreign firms to penetrate U.S. domestic markets. The size of the U.S. market is such that foreign firms with an opportunity to compete (price and quality) will compete, even if it becomes necessary to convert to U.S. customary measurement when the products are dimensionally sensitive (e.g., clothing from Hong Kong, Korea and Taiwan, sized according to our customary system).

Alternatively, while the size of each market offered by individual foreign nations may be too small for a U.S. firm to economically undertake conversion (in order to penetrate the market), the aggregate foreign market may well offer the same attraction to us as we do to foreign firms.

SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

STATEMENT OF LAWRENCE H. FUCHS, EXECUTIVE DIRECTOR

ACCOMPANIED BY RALPH THOMAS, DEPUTY DIRECTOR

PREPARED STATEMENTS

Senator WEICKER. The committee will now call Lawrence H. Fuchs, Executive Director of the Select Commission on Immigration and Refugee Policy.

The Commission issued its final report on March 1, 1981. The Commission has made significant recommendations to affect this Nation's immigration. These recommendations will undoubtedly have an effect on a number of Federal agencies whose operations are of concern to this subcommittee.

Mr. Fuchs, although the Commission itself does not require appropriations, we appreciate hearing from you as your Commission recommendations may affect our view of the budget requests of the Immigration and Naturalization Service and the Department of State.

First of all, I will take your statement in its entirety and have it placed in the record at this point so you can proceed in any way.

Mr. FUCHS. The statement you have in your hand is the statement of the chairman of our Commission, Rev. Theodore M. Hesburgh, president of the University of Notre Dame. I will not repeat any aspects of that statement. I will refer to it in the course of my remarks.

I would like to introduce to my right——

Senator WEICKER. If I may, I have two statements here. I have a statement of Rev. Hesburgh, which will be included in the record at this point in its entirety.

Senator WEICKER. I also have a statement here of yours. Both of these statements will be included in the record at this point.

Mr. FUCHS. I had not realized it was available to you.

[The statements follow:]

Statement of Lawrence H. Fuchs

The Select Commissioners made their recommendations after 19 months of listening to and analyzing the concerns and interests of individuals and groups across the United States. Those Commissioners who were also members of the Cabinet or Congress brought an awareness of the difficulties various government departments and agencies have with administering our current, often contradictory immigration laws and policies.

I will not repeat Chairman Hesburgh's remarks regarding the philosophy behind the Select Commission's recommendations. However, I do want to explain some of the assumptions and assessments that went into the development of particular recommendations and the possible implications--for policy implementation, institutional responsibility and cooperation, and budgetary support--of these recommendations.

The Select Commissioners did not vote for the specific resource levels or dollar figures which I will be mentioning this morning. The figures which I will cite are only Select Commission staff estimates either provided to Commissioners before their December/January decision meetings or developed afterward in keeping with the policy recommendations voted by the Commissioners.

In their assessment of existing policy and practice and in formulating their recommendations, Commissioners had certain overall goals. They were to:

1) Clarify policy to ensure maximum effectiveness;

2) Provide resources adequate to accomplish the defined tasks/goals of the department/agency;

3) Simplify administrative and legal procedures so as to avoid misinterpretation and litigation;

4) Provide for cooperation among departments and agencies to avoid duplication of effort and to encourage efficiency; and

5) Review immigration policy with an openness to new approaches for resolving what are viewed as inadequacies in the current law and its administration.

Illegal, Undocumented Migration

The Select Commissioners regarded illegal/undocumented migration as the most difficult issue in immigration policy. The absence of a clearcut policy has permitted the illegal entry or visa abuse by great numbers of people. Most of these persons, it was felt, came to work in the United States and their displacement of American workers and depression of wage and working standards were seen as the most significant negative consequences of their presence.

The Commissioners reviewed a range of alternatives to deal with the current illegal/undocumented population and the curbing of future illegal entries--from massive apprehension and deportation, to simply enhancing existing enforcement measures (including wage and hour and working standards legislation). Commissioners found that existing law enforcement was underfunded and should be given greater priority resources to do the job expected of it--to maintain the integrity of our land and sea borders, to carefully inspect those entering the United States through any port of entry, and to monitor the workplace.

Although a massive apprehension program in 1953-54 resulted in the deportation of over one million undocumented aliens, the Commission felt that repeating such a program was unwise for two reasons: (1) the current laws covering civil rights of individuals and access to private property would preclude the successful repetition of the 1953-54 experience; and (2) such a project would neither be successful nor cost-effective regardless of the personnel and resources devoted to it because it is believed that illegal aliens are scattered throughout every state in the union.

Commissioners determined that the contradiction in the present law making it illegal for a person to be in this country without documentation but not illegal for an employer to hire him or her is a prime reason for "pulling" increasing numbers to this country. To end the attraction of job opportunities, the Commission voted 14 to 2 in favor of an employer sanctions law making it illegal to knowingly hire illegal/undocumented aliens in the United States. A majority of Commissioners felt that only through this mechanism would you have an effective disincentive to curb illegal migration. The Select Commissioners were aware that significant cost increases would likely flow from enforcement of any employer responsibility/employee eligibility law, especially given their complementary recommendation that an identification mechanism for prospective employees also be implemented.

As part of a package for controlling illegal migration, Commissioners unanimously decided that a substantial portion of the undocumented aliens in this country should be legalized. This was viewed as part of a control program and not as a humanitarian gesture towards those aliens who had developed equities in the United States.

What then are the administrative and budgetary implications of these major enforcement recommendations?

Border and Interior Enforcement

The Commissioners voted for a substantial increase in Border Patrol funding which would cover additional personnel, more rapid replacement of sensor systems utilized to monitor points by which undocumented aliens enter across the Canadian and Mexican borders and additional equipment to make the agents more effective in their tasks. The Commissioners also recommended more primary inspectors for port-of-entry inspections and suggested a mobile inspection task force that would allow enhanced inspections at particular ports so that fraudulent entrants would have greater fear of thorough inspection.

The Commission supported the installation of a fully-automated non-immigrant document control system which would provide prompt information to track the initial destination of

non-immigrants and record their departures quickly and accurately, and provide printouts of persons who apparently had overstayed their approved visits to the United States. The Commissioners felt that non-immigrant visa abuse should be a priority of INS investigations, along with attention to the workplace.

The inadequacy of present alien detention and deportation funds was noted and increased funding recommended including the encouragement of repatriation to the interior of bordering nations and the assured return of other aliens to their country of origin. The Commission voted to require aliens to pay transportation costs where it was possible for them to do so.

Finally, the Commissioners favored greater cooperation among government agencies with enforcement responsibilities along the borders. They specifically recommended the institution of regional border command posts that would allow greater sharing of resources and focused attention on the interdiction of both undocumented/illegal migrants and illicit goods.

The staff estimate of the total costs of these enhanced enforcement activities at the border and in the interior was $45,000,000.

Economic Deterrents in the Workplace

The enactment of employer sanctions would require new institutional efforts by at least the INS and the Wage and Hour Division of the Department of Labor. Regardless of the implementation method, it would require substantial numbers of new personnel for investigative and clerical staffs.

The Commissioners did not achieve consensus on the mechanism to implement an employer sanctions law. The Commissioners voted 9-7 in favor of utilizing existing forms of identification; they voted 8-7 with one abstention for the use of a more secure system of employee eligibility verification.

Different employee eligibility systems have different cost requirements. Implementation of a system utilizing existing documentation is estimated by staff to require an annual operating

expenditure of $30,000,000. Such a system would obligate employers to ask for and record having seen one or more documents evidencing citizenship, permanent resident status, or work authorization as a non-immigrant alien. Field investigations would monitor compliance and an appeals mechanism would exist for employees and employers.

Three, more secure identification systems were considered by the Select Commissioners: 1) an improved, counterfeit-resistant social security card; 2) a work eligibility card; and 3) a call-in data bank system. Developmental costs for designing and acquiring the computer and communications bases for a more secure identification system would range from $80 to $100 million over a 5-7 year period. Each would require pre-employment enrollment through which eligibility was established and a card or a unique number was assigned to eligible workers. These systems would be phased-in and would require a sizeable enrollment and records staff as well as a field investigative force and an appeals system. Depending on the system selected, the annual operating cost could range from $135 to $295 million.*

Some Commissioners felt that such sizeable outlays were not likely to be voted by Congress and were not needed to effectively address the problem. Other Commissioners felt that even the highest estimated cost was more than justified because of the negative impact on working Americans of undocumented/illegal migrants in the workplace and the social welfare costs of displacing even one hundred thousand American workers.

In a separate recommendation the Commissioners affirmed their support for existing area control operations by INS focused on finding illegal/undocumented aliens in the workplace. Wage and Hour Division investigations of employers

*Utilization of the familiar social security card would have some advantages, but would clearly impact on other Social Security Administration activities. Other systems are estimated to cost more, but could be developed without impacting as significantly on the activities of the responsible agency. For example the 2600 Employment Service offices throughout the nation could introduce the enrollment procedures and card issuance or phone verification of eligibility as a distinct new activity.

suspected of or known in the past to have employed illegal/ undocumented aliens have been quite successful, both in securing compliance with existing employment standards laws and in securing additional funds for both workers and the U.S. government. Expansion of these programs through the addition of 200 investigators would cost an estimated $7,000,000.

Legalization

The legalization program proposed by Select Commissioners would apply to aliens who: 1) had entered the country illegally or fallen out of status before January 1, 1980; 2) met a continuous residency period to be determined by Congress; 3) and surmounted the grounds of exclusion deemed appropriate for the legalization program--to assure that they are persons of good moral character capable of maintaining themselves economically and contributing to the communities in which they live. The Commissioners also voted to utilize voluntary agencies to do the outreach and initial screening for the legalization program, a recommendation stemming from the success of the cooperation program between INS and the voluntary agencies for adjustment of status of Indochinese refugees.

During the proposed legalization program, illegal migrants could register anytime during a 12-month period. Assuming the fastest possible legislative action on legalization--mid-1981--, a two-year residency requirement, and the program beginning January 1, 1982, the staff estimates a maximum of 60 per cent of the existing population of undocumented/illegal aliens or 3.6 million persons would qualify for legalization. If the legalization program were passed in mid-1983, required four years of residency and began on January 1, 1984, an estimated 1.5 million or about 25 percent of the undocumented/illegal aliens presently here would qualify.

The costs of the legalization program would range from $22.5 million, (low estimate) to 54 million (high estimate). A $25.00* application fee for principal applicants should cover these costs, but the INS appropriation would have to be increased since these fees would normally go to the General Fund of the Treasury unless special legislation were passed by the Congress.
Participation of the voluntary agencies could not be secured for free as with the current Indochinese adjustment program, but would require some repayment for outreach and initial processing costs. The $25.00 application fee should cover this expense also and might even be stretched to cover medical examinations if this were seen as an important adjunct requiring the participation of the U.S. Public Health Service.

The voluntary agencies would be utilized to secure temporary personnel and short-term processing space, thereby decreasing costs to the Federal government. Temporary clerical personnel could be used by the Immigration Service but, some short-term increase of trained examiners would be required for final interviewing of candidates for legalization and determination of their eligibility.

The Admission of Immigrants

The proposed increase in numerically limited immigration from 270,000 to 350,000 plus the provision of an additional 100,000 visa numbers for five years to reduce the backlog would require substantial resource increases for both INS and the Consular Service of the State Department. In both instances, new personnel would have to be recruited and trained to handle the increased flow of petitions and adjustment interviews and status verification investigations. SCIRP staff estimates of the total cost to the INS are $9,300,000 annually (in 1981 dollars). Much of this increase could be offset by existing application fees of $40.00 per petition in immediate relative cases. (Customarily these funds--estimated at $8,400,000 for 160,000 petitions--would go to

*The actual fee should be set to cover all related costs, and depending upon program components could range from $15-$50 per principal applicant.

the General Fund of the Treasury unless special legislation were passed.)

New costs for the Consular Service could range from $10-15 million depending upon actual costs for maintaining personnel overseas and the difficulty and cost of obtaining new administrative space in countries where we expect high demand for family reunification petitions.

On the other hand, either alternative mechanism proposed for screening labor market impact and for selecting independent immigrants would significantly reduce the costs incurred by the present labor certification procedure.

Refugee and Mass Asylum Issues

Refugee Resettlement

The Select Commission did not have data available to assess the existing refugee resettlement programs as codified in the Refugee Act of 1980. In its review of resettlement practices, the Commissioners found several areas in which they felt that savings could and would be found. More careful monitoring of cash assistance programs and the specific separation of medical assistance from cash assistance programs were pinpointed as prime areas for savings. Although various patterns of resettlement appear to be successful in different settings with people of different backgrounds, the Commission believes that the goal of resettlement should be self-sufficiency at the earliest possible time. In some instances, English language training and job training programs may require welfare support for a significant period, but the Commission is aware of successful job placements that incorporated both language and on-the-job training.

The Commissioners suggested that Congress consider impact aid to state and local governments and a possible extention of resettlement benefits beyond the present 36 months of full 100 per cent federal reimbursement. However, the thrust of Commission recommendations was to have an effective, bureaucratically lean refugee resettlement program, so as to minimize the burden on the

American public and accelerate the entry of refugees as self-sustaining members of our economy and society.

Mass Asylum

The Cuban push-out of 1980 was the first United States experience in dealing with large groups claiming mass asylum. The Commissioners made several recommendations to ensure that the United States is fully prepared to deal with future exigencies, to expedite the fair processing of genuine asylum cases, and to discourage frivolous entries and claims.

The Select Commissioners recommended establishment of an inter-agency body to develop procedures, including contingency plans for opening and managing federal processing centers for possible future mass asylum emergencies. When this contingency plan is in place, the government can avoid the costs inherent in ad hoc responses. For example, the identification of possible processing centers would obviate the need to open military camps or to release persons into communities before they had been processed and judged to be eligible for asylum.

Commissioners also recommended the development of group profiles to aid specially trained asylum admissions officers in the rapid processing of asylum claims. In addition, Commissioners recommended that all appeals resulting from the denial of asylum status be limited to the appellate division of the proposed Article I Immigration Court.

It is estimated that the total cost of the planning phase for asylum emergencies and the training of special asylum admissions officers should be less than $300,000. The savings through more rapid processing of normal asylum cases--currently numbering 10,000 per year--might be almost equivalent to the outlay.

Non-Immigrants

The Commissioners recommended expedited review of requests for foreign student employment authorization. Staff estimates

that ten work years or an additional $300,000 in annual appropriations for adjudication will achieve this goal. The Commissioners supported an experimental visa-waiver program for countries which currently have low rates of visa abuse without assuming that it would provide significant savings initially. If successful, consular non-immigrant workloads would fall in the selected countries but immigration inspectors at ports of entry in the United States would have to more carefully scrutinize arriving visitors without visas.

The Commissioners recommended a streamlining of the existing temporary worker program. Some revenue increases should accrue to federal and state governments through the levy of social security and unemployment insurance taxes on H-2 workers and their employers. However, this recommendation was made primarily to remove the current wage differential in the cost of employing domestic and foreign workers and to serve as a disincentive to hiring foreign foreign workers rather than to provide additional revenues. More rapid processing could result in the filing of more temporary worker petitions; a slight expansion of this program is also possible.

Administrative Issues

Article I Immigration Court

The proposed Article I Immigration Court would replace the existing Immigration Judges and the Board of Immigration Appeals which serves as an appellate body dealing with both administrative and judicial actions. Although some savings would accrue from a reduction in appeals, higher pay scales for judges and greater resources devoted to assure the prompt completion of hearings and appeals could mean an increase of about $2,000,000 above the $4,000,000 currently devoted to judicial review by INS. The savings would come in the area of litigation costs for U.S. Attorneys' offices and court costs for the U.S. District and Appellate Court systems.

Administrative Naturalization

Select Commissioners recommended that naturalization become an administrative process with an optional judicial ceremony where it is convenient and individuals request it. The reduction in administrative processing time as well as the travel and delays associated with judicial naturalization should result in an annual $1,000,000 saving from the current annual outlay of $12,000,000 for all naturalization activities.

Professionalism of INS Employees

Select Commissioners recommended a variety of new training and professionalization programs for INS employees. Even if the retraining of existing employees were phased and most emphasis given to new employees, these recommendations would require an additional $1,000,000 annually in training monies. The maintenance of a fully-funded, professional integrity program, another Commission recommendation, has already been supported by past executive and Congressional actions.

Legal Issues

Overall, the recommended new statutory language for the powers of INS officers and procedures for arrest and detention should reduce litigation challenging the appropriateness or interpretation of regulations and administrative directives. These changes would add to the effectiveness of the law as well by enhancing the certitude of consistent application of the law.

However, two recommendations in this area will require additional resources. Commissioners recommended that government counsel be available free of cost to permanent resident aliens in exclusion and deportation proceedings who are indigent and for whom free legal services are not otherwise available. It is estimated that this recommendation should apply to no more than 200 cases annually and cost approximately $200,000.

Changing the requirements for qualification for suspension of deportation (Section 244 of the Immigation and Nationality

Act) from "extreme hardship" to "hardship" will increase the caseload in this area. Dropping Congressional review will save some funds but the net additional resources required might be as high as $300,000.

Cooperation in Administering the Law

The Select Commissioners supported the retention of the present federal agency structure for administering U.S. immigration and nationality laws. However, Commissioners also sought improved coordination and cooperation to avoid competition, duplication, and variance in policy interpretation. This emphasis was reflected in several recommendations. Let me give three examples.

The interagency planning group for mass asylum emergencies would be expected to develop contingency plans that would assign appropriate roles to various agencies and minimize the demand or drain on any single governmental entity.

While recommending that final decisions in asylum cases rest with INS, the Commissioners indicated that assistance should be received from the Office of the Refugee Coordinator through the preparation of group profiles and from the area experts of the State Department.

In its recommendation for regional border enforcement posts the Select Commissioners sought to expand upon the cooperation of INS, the U.S. Customs Service and the Drug Enforcement Administration as has been the case in the El Paso Intelligence Center. Through joint planning better use can be made of existing resources and more effective responses to emergencies should result.

SAVINGS

It is estimated that approximately $6,150,000 could be saved as a result of Commission recommendations in several areas. The table below summarizes staff estimates of these potential savings.

Deportation at Alien's Expense (net after administrative costs)	$ 500,000
Separation of Medical and Cash Assistance. 1000 cases x $1500/yr.	1,500,000
Expedited Mass Asylum Processing with Group Profiles (5-6 work years)	150,000
H-2 Temporary Workers $15 million in Social Security contributions from only 30,000 mostly short-term workers	--
Article I Court--fewer appeals	1,000,000
Administrative Naturalization	1,000,000
Legal Issues Reduction in Litigation Costs	2,000,000
	$6,150,000

Additionally, there will be further savings because fewer American workers will be displaced if the Commission's enforcement proposals are enacted. It is extremely difficult to project accurately total savings in this area since it is not known with precision how many peple enter the country illegally each year and how many American workers may actually be displaced. However, the Congressional Budget Office estimates that the social transfer costs for one worker unemployed for one year are $7,000. Assuming that 100,000 people are displaced for one year or 200,000 workers are displaced for six months, the social transfer costs would be $700,000,000.

In summary, I would like to say that the Select Commissioners did not make their recommendations in a dollar or resource vacuum. Where they recommended increased resources and new policies, they were fully cognizant of the difficulties in obtaining increased personnel and resource outlays in this time of economic scarcity and budget reductions. However, they believed that policy goals involved and the long-term objectives warranted the increased

expenditures. The Select Commission believes that the benefits to this country--whether from the economic growth attributed to the entry of productive new immigrants, or from a reduction in social costs due to the displacement of American workers by illegal/ undocumented aliens--are ultimately of significant benefit to the entire nation. Additionally Commissioners believe that the short-term response of "doing nothing" will inevitably lead in the future to increased economic and social tensions at incalculable costs to the fabric of this society and our nationaly unity.

Thank you for giving me the opportunity to describe the Select Commission's recommendatons in some detail and I will be glad to answer any questions you may have.

STATEMENT OF THE REV. THEODORE M. HESBURGH

I welcome the opportunity to explain the philosophy and policy goals which underlie some of the major recommendations of the Select Commission on Immigration and Refugee Policy. I will discuss only the highlights today and not the more than one hundred recommendations we made for immigration and refugee policy reform.

The Immigration and Nationality Act--the second longest piece of U.S. legislation--has grown like Topsy. It has never received a comprehensive, systematic examination by a bipartisan, joint Congressional-Presidential Commission, an examination that is long overdue. But the facts which precipitated the creation of this Commission go beyond the details of the inadequacy of that legislation.

In addition to concern about the need to overhaul, simplify and clarify the law, the Commission was created by Congress because:

- A large number of undocumented/illegal migrants live in the United States and continue to come here;

- Legal immigration has grown and its composition has changed substantially since 1965;

- The number of refugees in the world has grown tremendously in the last ten years and the United States has accepted a large number of them;

- There is great dissatisfaction on many grounds with the way our immigration and refugee laws work and how they are administered;

- And some Americans have begun to doubt their own ideals and their own interests in accepting immigrants.

When such doubts surfaced almost 75 years ago, another Select Commission on immigration--the only other one in history--was created. Four years later, it gave its answers in terms of fear and even despair. Its major finding was that immigration from Southern and Eastern European countries should be curtailed sharply because Italians, Greeks, Poles, Slavs and Jews could not be assimilated as Americans.

The report led to sharp cutbacks in immigration from Eastern and Southern Europe and to a bar on Asian immigration altogether. The cost in human terms was enormous. Some persons who otherwise would have immigrated could not join their families already here; others who might have come as refugees or immigrants met their fate in the Holocaust and World War II. Their loss to the United States in talent and manpower was tremendous.

Since the passage of this restrictionist legislation, the Immigration and Nationality Act has received major attention only twice. First, in the passage of the McCarran-Walter Act of 1952, which continued the restrictionist policy and the national origins quota system which was intended to discriminate against certain kinds of persons viewed as not suitable for immigration into the United States. Then, in 1965, the national origins quota was abolished, partly under the leadership of two of our present Commissioners, Representative Peter W. Rodino and Senator Edward M. Kennedy. Several new features were added to our immigration law, the most important of which was an explicit provision for refugees and an explicit ceiling on immigration from the Western Hemisphere for the first time in American history.

The 1979 Select Commission

In 1979, this Select Commission began its thorough and comprehensive look at immigration and refugee policy. After 18 months of work, including 21 public consultations with experts on

a variety of subjects, 12 public hearings held in different cities all over the country, 7 public meetings and a systematic review and analysis of all existing research on immigration, including the commissioning of more than two dozen new studies, we have presented our final report, to be followed in the next two months by detailed documentation.

Unlike the Select Commission of 1907, we approached this extremely complicated and emotional subject with open minds. But certain beliefs have underlined our work:

- We believe in the equality of people;

- We believe that people are capable of becoming productive Americans and good citizens regardless of nationality;

- We also believe that it is no longer possible to have unlimited immigration and that our immigration laws must be enforced.

Our history is largely the story of immigration. Even the Indians were immigrants. The ancestors of all other Americans--when measured in terms of world history--came here only yesterday.

As a refuge and a land of opportunity, the United States remains the world's number one magnet. This fact reaffirms the faith of our founding fathers and the central values we have adopted as a nation--freedom, equality under the law, opportunity and respect for diversity. Throughout our history, our leaders have seen in immigration the articulation of these deeply held and religiously based values. President Ronald W. Reagan, in his speech accepting the Republican nomination for the presidency, reminded us of that fact when he said:

> "I ask you to trust that American spirit which knows no ethnic, religious, social, political, regional or economic boundaries: the spirit that burned with zeal

> in the hearts of millions of immigrants from every corner of the earth who came here in search of freedom . . ."

Then, examining the events of the recent past, the President asked:

> "Can we doubt that only a divine Providence placed this land--this island of freedom here as a refuge for all those people in the world who yearn to breathe free? Jews and Christians enduring persecution behind the Iron Curtain, the boat people of Southeast Asia, Cuba, and Haiti, the victims of drought and famine in Africa, the freedom fighters in Afghanistan and our own countrymen held in savage captivity."

Letters and oral testimony to the Select Commission affirm the continuing vitality of President Reagan's characterization of the United States as a land of opportunity and as a beacon of liberty for immigrants. We have listened carefully to these moving voices, but we have also been faced with the reality of limitations on immigration. If it is a truism to say that the United States is a nation of immigrants, it is also a truism that it can no longer be a land of unlimited immigration. As important as immigration has been and remains to our country, it is no longer possible to welcome as did George Washington all of the oppressed of the world, or to say with poet Emma Lazarus that we should take all of the huddled masses yearning to breath free.

The United States of America--no matter how powerful and idealistic--cannot by itself solve the problems of world migration. This nation must continue to have some limits on immigration. Our policy--while providing opportunity to a portion of the world's population--must be guided by the basic national interests of the people of the United States.

The emphasis in the Commission's recommendations, which are themselves complex, can be summed up quite simply: We recommend closing the back door to undocumented/illegal migration, opening the front door a little more to accommodate legal migration in the interests of this country, defining our immigration goals clearly

and providing a structure to implement them effectively, and setting forth procedures that will lead to fair and efficient adjudication and administration of U.S. immigration laws.

The United States and the World

In emphasizing that our recommendations must be consistent with U.S. national interests, we are aware of the fact that we live in a shrinking, interdependent world and that world economic and political forces result in the migration of peoples. We also are aware of how inadequately the world is organized to deal with the dislocations that occur as a result of such migrations. None of the great international issues of our time--arms control, energy, food or migration--can be solved entirely within the framework of a nation-state world. Certainly, there is no unilateral U.S. solution to any of these problems; we must work with a world organized along nation-state lines and with existing international organizations. As a nation responsible for the destiny of its people and their descendants, we can better deal with these problems by working with other nations to build more effective international mechanisms. That is why we began our recommendations with a call for a new emphasis on internationalizing world migration issues. Since many large-scale, international migrations are caused by war, poverty and persecution within sending nations, it is in the national interests of the United States to work with other nations to prevent or ameliorate those conditions.

Immigration and the National Interest

That immigration serves humanitarian ends is unquestionable: most immigrants come to the United States seeking reunion with their families or as refugees. But in examining U.S. immigration policy and developing its recommendations, the Select Commission also asked another question: Is immigration and the acceptance of

refugees in the U.S. national interest? That question was asked by many in this country when Fidel Castro pushed his own citizens out of Cuba knowing that their main destination would be the United States. Nothing about immigration--even widespread visa abuse and illegal border crossings--seems to have upset the American people more than the Cuban push-out of 1980. But these new entrants were neither immigrants nor refugees, having entered the United States without qualifying as either. Their presence brought home to most Americans the fact that U.S. immigration policy was out of control. It also brought many letters to the Select Commission calling for restrictions on U.S. immigration.

It is easy to understand the feelings that motivated these opinions, but in the light of hard-headed U.S. interests it would be a mistake to let the emotion generated by an unusual, almost bizarre episode guide national policy. While the Cuban push-out should not be permitted to happen again, the fact that it happened once should not blind us to the advantages of legally accepting a reasonable number of immigrants and refugees.

To the question: Is immigration in the U.S. national interest?, the Select Commission gives a strong but qualified yes. A strong yes because we believe there are many benefits that immigrants bring to U.S. society; a qualified yes because we believe there are limits on the ability of this country to absorb large numbers of immigrants effectively. Our work during the past nineteen months has confirmed the continuing value of accepting immigrants and refugees to the United States, in addition to the humanitarian purpose served. The research findings are clear: Immigrants, refugees and their children work hard and contribute to the economic well-being of our society; strengthen our social security system and manpower capability; strengthen our ties with other nations; increase our language and cultural resources and powerfully demonstrate to the world that the United States is an open and free society.

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New immigrants benefit the United States and reaffirm its deepest values. One can see them in New Orleans, where Indochinese refugees, hard at work during the day, crowd classrooms at night to learn English; in Fall River, Massachusetts, a city with more than 20 identifiable ethnic groups whose ancestral flags fly in front of City Hall has been restored to economic health by recent Portuguese immigrants; in Koreatown in Los Angeles, where Korean Americans have taken an inner-city neighborhood and transformed it into a vital community; in Florida, where Cuban Americans have renewed the City of Miami, through economic ties to Latin America; in Chicago, where young Jewish immigrants from the Soviet Union work two jobs in addition to attending high school; in San Antonio, where new Mexican immigrants are taking advantage of English literacy classes and have joined Mexican Americans with many generations of U.S. residence to create a healthy economy and to strengthen trade and cultural ties with our border neighbor; and in Denver, where, in a third grade class, students from five countries are learning the history of the United States, and are learning to count in two foreign languages in addition to English, and where, in February 1980, a Vietnamese American third grader who had been in this country for only six months identified George Washington as "the father of our country."

But even though immigration is good for this country, the Select Commission has rejected the arguments of many economists, ethnic groups and religious leaders for a great expansion in the number of immigrants and refugees to be accepted by the United States. Many of those in favor of expanded immigration have argued that the United States is capable of absorbing far greater numbers of immigrants than are now admitted. They contend that:

- The United States has the lowest population density of any wealthy, industrial nation in the world, with the exceptions of Canada and Australia; and
- The United States, with only 6 percent of the world's population, still accounts for 25 percent of the world's gross national product.

They further point out that the United States faces serious labor shortages in the decade to come, particularly of young and middle-aged workers. Greatly expanded immigration, they believe, will go a long way towards providing needed workers.

Religious leaders have presented some of these same arguments from a different perspective. They, too, note the vast resources and relatively low population density of the United States, but argue that this nation has a humanitarian responsibility to provide immigration opportunities to those seeking entry on the basis of family reunification or as refugees. They wish the United States to preserve its role as a country of large-scale immigration, despite fears about the entry of the foreign born.

Historians, in their support of increased immigration, have cautioned against excessive restrictionist tendencies. They point out that U.S. citizens have always been concerned about the arrival of immigrants, but note that immigrants have always made contributions to U.S. society. These scholars also state that the proportion of foreign-born citizens in the United States is now at an all-time low since 1850, when the government began to keep such statistics. If immigration did no harm to U.S. society when foreign-born citizens accounted for 14 to 15 percent of the population, the historians argue, it should certainly cause no internal problems now.

The Select Commission is, however, recommending a more cautious approach. This is not the time for a large-scale expansion in legal immigration--for resident aliens or temporary workers--because the first order of priority is bringing undocumented/illegal immigration under control, while setting up a rational system for legal immigration.

The Commission is, therefore, recommending a modest increase in legal immigration sufficient to expedite the clearance of backlogs--mainly to reunify families--which have developed under the current immigration system and to introduce a new system, which we believe will be more equitable and more clearly reflect our interests as a nation.

Such a modest increase will continue to bring the benefits of immigration to the United States without exacerbating fears--not always rational--of competition with immigrants. Such an increase recognizes that immigrants create as well as take jobs and readily pay more into the public coffers than they take out, as research completed for the Select Commission shows. It also recognizes that immigrants in some locales do compete for jobs, housing and space in schools with citizens and previously entered resident aliens. In the case of refugees, there is an immediate competition with needy U.S. citizens for a variety of services that must be paid for by U.S. taxpayers. In many communities, local officials have complained about the strains which a sudden influx of refugees has placed on their capabilities to provide health services, schooling and housing.

The American people have demonstrated that they are willing to do what must be done to save a portion of the world's refugees from persecution and sometimes even from death. That is why the Select Commission has endorsed the Refugee Act of 1980, even while questioning aspects of its administration. But it is impossible for the United States to absorb even a large proportion of the 16 million refugees in this world and still give high priority to meeting the needs of its own poor, especially those in its racial and ethnic minorities. Our present refugee policy may seem unduly harsh and narrow to many, particularly when a terribly poor country such as Somalia has more than one million refugees in its care. But we must be realistic about our obliga-

tions as a society to persons in need who already live in this country.

Undocumented/Illegal Migration

Illegal migrations of persons in search of work occur extensively throughout Europe, Latin America, as well as in Canada and the United States. Such migration to the United States is so extensive that hundreds of thousands of persons annually enter this country outside of the law. Although most of these migrants usually do not stay, each year tens of thousands of other aliens remain in the United States illegally after coming here originally as students or other nonimmigrant aliens. The Select Commission is well aware of the widespread dissatisfaction among U.S. citizens with an immigration policy that seems to be out of control.

Some have argued before the Select Commission that there is virtually nothing that can be done about the tidal movements of people that are propelled by economic forces. They believe this is particularly true in a country such as ours, with land and coastal borders which are easy to cross, where millions of tourists and students, having entered, find it easy to stay. Some have further testified that the United States has nothing to fear from illegal migration since immigrants who come or remain outside of the law are self-selected, hard working, highly creative persons who, even if they remain in this country, aid rather than harm U.S. society. This is a view that the Commission believes does not sufficiently consider the serious problems created by illegal migration.

One does not have to be able to quantify in detail all of the impacts of undocumented/illegal aliens in the United States to know that there are some serious adverse effects. Some U.S. citizens and resident aliens who can least afford it are hurt by competition for jobs and housing and a reduction of wages and

standards at the workplace. The existence of a fugitive underground class is unhealthy for society as a whole and may contribute to ethnic tensions. In addition, widespread illegality erodes confidence in the law generally, and immigration law specifically, while being unfair to those who seek to immigrate legally.

The Select Commission's determination to enforce the law is no reflection on the character or the ability of those who desperately seek to work and provide for their families. Coming from all over the world, they represent, as immigrants invariably do, a portion of the world's most ambitious and creative men and women. But if U.S. immigration policy is to serve this nation's interests, it must be enforced effectively. This nation has a responsibility to its people--citizens and resident aliens--and failure to enforce immigration law means not living up to that responsibility.

To deal with illegal migration, the Select Commission recommends three interrelated steps. Because most undocumented/illegal aliens come to the United States seeking work, the Commission believes that the current law should be amended to make it illegal for employers to hire undocumented migrants, thereby significantly diminishing the magnet that attracts workers from other countries. To prevent discrimination and provide a ready means for employers to determine who is eligible to work, the Commission also believes some type of identification mechanism--either based on current forms of documentation or the establishment of a more secure system--should be utilized in conjunction with an employer sanctions law.

A second part of the Commission's three-part program is a commitment to enforcement of existing laws against illegal entry and presence in the interior as well as enforcement of existing wage and hour standard laws governing the workplace. Too often in the past

budgetary and personnel constraints have prevented effective enforcement of our laws. Coyotes, smugglers of undocumented aliens who prey on the hopes and dreams of hard-working individuals, have gone free because of lack of money to successfully prosecute them. The lack of a clear commitment to enforcement has futher hindered curbing the illegal flow.

The third aspect of the Commission's commitment to regaining control over our immigration policy is its unanimous vote for legalization of a substantial portion of undocumented aliens now in the United States. The Select Commission through this vote acknowledges, in a sense, that our society has participated in the creation of the problem. Many undocumented/illegal migrants were induced to come to the United States by offers of work from U.S. employers who recruited and hired them under protection of present U.S. law. A significant minority of undocumented/illegal aliens have been part of a chain of family migrants to the United States for at least two generations. Often entering for temporary work, these migrants began coming to the United States before this nation imposed a ceiling on legal immigration from the Western Hemisphere in 1968 and a 20,000 per-country visa ceiling on legal immigration for each Western Hemisphere country in 1976.

But that is not the main reason for legalizing a substantial portion of those who are here. Legalizing those who have settled in this country and who are otherwise qualified will have many positive benefits for the United States as a whole:

- Hardworking, law-abiding persons with a stake in U.S. society will come out into the open and contribute much more to it;
- No longer exploitable at the workplace, these persons no longer will contribute to depressing U.S. labor standards and wages;
- New and accurate information about migration routes and the smuggling of people into the United States will contribute to the targeting of enforcement resources to stop illegal migrations in the future;

- Fuller information about patterns of visa abuse by those who entered as nonimmigrant aliens will help to make our visa issuance process and control at ports of entry more effective; and
- More complete data about the origins of migration will enable the United States to work with large sending countries in targeting aid and investment programs to deal with migration pressures at the source, in the villages and provinces of those countries.

The recommended legalization program will help to enforce the law, however, only if other enforcement measures designed to curtail future illegal migration to the United States are instituted. That is why the Commission has linked the legalization program to the introduction of such measures. Recognizing that future migration pressures could lead to even higher levels of illegal migration to the United States, the Commission has emphasized the development of effective enforcement strategies, including a new law to penalize employers who hire undocumented/ illegal aliens and new measures to control the abuse of nonimmigrant status.

No one on this Commission expects to stop illegal migration totally or believes that new enforcement measures can be instituted without cost. But we do believe that we can reduce illegal entries sharply, and that the social costs of not doing so may be grave. What is a serious problem today could become a monumental crisis as migration pressures increase.

The Reunification of Families

A better immigration system may help to reduce the pressures for illegal migration to some extent. A look at present U.S. immigration statistics reveals one relatively small but important source of illegal migration. Of the more than one million persons now registered at consular offices waiting for visas, more than 700,000 are relatives of U.S. citizens or resident aliens, including spouses and minor children of resident aliens. There is something wrong with a law that keeps out--for as long as eight years--the small child of a mother or father who has settled

in the United States while a nonrelative or less close relative from another country can come in immediately. Certainly a strong incentive to enter illegally exists for persons who are separated from close family members for a long period of time.

What is basically wrong is that we have not made clear our priority to reunify the immediate relatives of U.S. residents regardless of their nationality. Among our recommendations are two which would help to do just that. The first puts immigrants whose entry into the United States would reunify families on a separate track from other immigrants. The second puts spouses and minor children of lawful permanent resident aliens under a separate, numerically limited category without country ceilings. Eliminating country ceilings in this category should help assure the reunification of the families of permanent resident aliens on a first-come, first-served basis within a fixed world ceiling.

Independent Immigrants

The creation of a separate category for nonfamily immigrants--the independent category--may also somewhat reduce illegal immigration by broadening immigration opportunities. It reaffirms the importance to the United States of traditional "new seed" immigrants who come to work, save, invest and plan for their children and grandchildren, and creates an immigration channel for persons who cannot enter the United States on the basis of family reunification. It is the Commission's hope that this category will provide immigration opportunities for those persons who come from countries where immigration to the United States has not been recent or from countries that have no immigration base here.

Many other important issues have also been addressed by the Select Commission, including an upgrading of our system for administering U.S. immigration laws, the need to streamline deportation proceedings and the importance of English-language acquisition.

We have tried to address these and other issues with open minds, recognizing that few such issues can be resolved easily.

That there is disagreement on some issues among Commissioners is not surprising since we represent a great variety of perspectives and since the complex issues of immigration are charged with emotion and special interest. Even though we have disagreed among ourselves in formulating some answers, we have reached consensus on a great many of the questions that faced us. Our basic concern has been the common good that must characterize U.S. law, and we have tried to recommend policies that would be responsible, equitable, efficient and enforceable.

We have not, of course, answered every question and our answers are far from perfect, but we believe we asked the right questions and that the answers are free from the cant, hypocrisy and racism which have sometimes characterized U.S. immigration policy in years gone by. With that in mind, we hope that our recommendations, in the words of George Washington, "set a standard to which the wise and honest can repair."

INTRODUCTION OF ASSOCIATES

Mr. FUCHS. I would like to introduce Dr. Ralph Thomas on my right who is Deputy Director of the Commission and who I believe knows more about the administration of our immigration and refugee policies than any person and was the chairman of the interagency group that worked for the past 16 months or so on the development of cost estimates with respect to the alternative recommendations considered by the Commission. He can, either now or at some subsequent time, along with myself, add much greater detail to what I am about to say.

Father Hesburgh regrets very much he cannot be here. He has taken this responsibility with great seriousness, as with respect to all tasks he undertakes. He is in motion constantly on behalf of a dozen commissions, boards, and so on.

They say at Notre Dame there is a little difference between Father Ted Hesburgh and God. God is everywhere; Father Hesburgh is everywhere but Notre Dame.

Senator WEICKER. I believe that.

Mr. FUCHS. Last time we did business in the O'Hare Airport. I was headed out West and he was headed East.

THE SELECT COMMISSION'S CONCLUSIONS AND RECOMMENDATIONS

Let me begin by saving that the Select Commission made its recommendations after 19 months of listening to and analyzing the concerns of interested individuals and groups across the country. We held 12 public hearings. We had 21 public consultations and the Commission met 7 times. Your colleague, Senator DeConcini, who I believe is on this subcommittee, and Senator Mathias from the full Appropriations Committee, along with Commissioners, Senator Alan Simpson, Senator Edward Kennedy, placed great emphasis on this work. They were in attendance at most of those seven meetings and public hearings.

The Commission has brought an awareness of the difficulties that various departments and agencies have with administering our current and often contradictory laws and policies.

I will not repeat Chairman Hesburgh's remarks. I will just summarize the final conclusions of the Commission in a very simple way.

The Commission voted overwhelmingly, in fact I would say with virtual unanimity, to affirm America's historic commitment to immigration. It really voted for keeping the front door open and, in fact, widening it just a little bit in ways that will be made clear as the Commission's report becomes discussed within the authorization committees.

It did this because its review of the research with respect to recent immigrants and refugees indicates that it is in the best interests of the United States to do so. Immigration, while it is largely for the purpose of family reunification and acceptance of refugees—the relieving of human suffering, torture, and fear of persecution—presents us with one of those rare opportunities in life where one can do well by doing good. Immigrants quickly pay back more into the coffers of the United States than they take out. They rapidly achieve—because of hard-working habits, saving, investment, higher rates of productivity—and contribute to economic growth.

They also contribute strongly to the cultural development of the United States consistent with our goal of national unity.

There are many examples, but one Father Ted likes to give, is the fact that 30 percent of the existing Nobel laureates in the United States are immigrants or refugees. In the course of U.S. history, 40 percent of our Nobel laureates have been immigrants or refugees.

So the Commission in that sense can be called proimmigration. By the same token, all the Commissioners can also be called prorestriction. Because the second major conclusion that the Commissioners agreed to, and Senator DeConcini, one of my 16 bosses who is here now, can contradict me anytime in the course of these remarks, but I think they all agree that it is no longer possible to return to the wide-open immigration of yesteryear. Very careful, fine-tuned restrictions are needed which means that the law has to be enforcible. If you come to the conclusion that the law has to be enforced for various reasons, then we are talking about the expenditure of money.

It is not the acceptance of immigrants that costs much money. In fact, that is quickly paid back to the United States by the behavior of immigrants themselves in this country. But it is the enforcement of limitations in the law which involve the expenditure of some money.

So, in a sense, the Commission said we affirm immigration—let's keep the front door open—but let's close the half-open back door of illegal migration. Let's take the measures required for us to do that because failure to do that in the short run will lead to some very heavy social and economic costs in the long run.

The Commission also made, as you will see, a great many recommendations dealing with the administration of the law itself in an effort to bring greater equity and efficiency to its administration.

I want to explain some of the assumptions and assessments that went into development of our policy recommendations which have budgetary implications. The Select Commissioners did not vote for the specific resource levels or dollar figures which I will be mentioning this morning. The figures which I will cite are Select Commission staff estimates, either provided to Commissioners before their December-January meetings or developed afterward in keeping with policy recommendations voted by the Commissioners at those meetings.

In their assessment of existing policy and practice and in the formulation of their recommendations, the Commissioners had certain overall goals. I won't repeat them since you have them in front of you and can read them and I know you want to save time for questions. I will get right down to the nitty-gritty.

The Select Commission regarded illegal/undocumented migration as the most difficult issue in immigration policy. The absence of a clear-cut policy has permitted illegal entry or visa abuse by a considerable number of people with several negative consequences. We look at the future with some apprehension.

In the first place, the displacement of American workers in some sectors of the economy and in some locales is evident. Second, we found the depression of work standards in some sectors of the economy.

Third, the existence of an underground class of persons who in some cases, because they are underground and fugitive, neglect their health, neglect even in some cases the education of American-born children, and may even fail to report criminal activity against them is detrimental to our national interests.

Finally, the half-open back door, a phrase used by Commissioner's to describe our amount of immigration enforcement, encourages an undermining of confidence in American law in general and immigration law in particular. And, in fact, because the American people often confuse legal with illegal immigration, it tends to disparage immigration and leads to neglect of the important benefits legal immigration brings to this country.

CURBING ILLEGAL MIGRATION

The Commission studied a range of alternatives to deal with this population and the curbing of future illegal immigration, from massive apprehension and deportation to simply enhancing existing enforcement measures, including wage-and-hour and the working standards legislation.

The Commissioners have found that existing law enforcement is underfunded and should be given greater priority. It is necessary, the Commissioners believed, to maintain the integrity of our land and sea borders, to carefully inspect those entering the United States through any port of entry, and to monitor the workplace.

Although a massive deportation program in 1953–54 resulted in the deportation of over 1 million undocumented aliens, the Commission felt it would be unwise to repeat that effort. The current laws covering civil rights of individuals and access to private property would preclude us doing it in the way it was done in 1953 and 1954.

Such a project would neither be successful nor cost effective regardless of the personnel and resources devoted to it because it is believed that illegal aliens would scatter to every State of the Union. It simply could not be done.

The Commission determined that the contradiction in the present law making it illegal for a person to be in the country without documentation but not illegal for an employer to hire him or her is a prime reason pulling increasing numbers to this country.

To end the attraction of job opportunities, the Commission voted 14 to 2 in favor of an employer sanctions law making it illegal to knowingly hire illegal and undocumented aliens in the United States. The Commission felt it was an important mechanism, among many others, to accomplish the goal of having disincentives to curb illegal migration.

The Select Commissioners were aware that significant cost increases would likely flow from the enforcement of any employer responsibility/employee eligibility law, especially given their complementary recommendation that a reliable eligibility system for workers include a method of identification for prospective employees and that this identification mechanism also be implemented.

As part of the package for controlling illegal migration, the Commissioners unanimously voted that a sustantial portion of the undocumented illegal aliens in this country should be legalized. This was viewed as part of the control program—this is a very important part—and not as a humanitarian gesture toward those aliens who have developed equities in the United States. There was a feeling on the part of some Commissioners that it is important to do it for that reason. But generally the feeling was, and the sentiment was, that it was foolish to keep putting money out on a cops and robbers effort that was cost ineffective, trying to chase down people who have been here for years, some of whom have children here. Moreover, it is extremely important to get on record for the first time accurate information about the sources—the towns, villages, and provinces and not just the countries—of the present stock of illegal aliens; to get on record the migration routes that they follow in coming across the borders; to get on record the characteristics of these people and the impact that they have had in the United States.

We do not have that information. There is no other way to get that information, and I urge the Congress not to spend a nickel more of this Government's money in an effort to try to get that information, short of a comprehensive legalization program which would help us curtail future flows and enable us to make sense out of any trade or investment programs to deal with the sources of migration.

Once again, foreign aid can be very wasteful and, in fact, lead to further migration, rather than reduce it, unless we know much more about exactly where illegal aliens come from.

So the Commission voted for a legalization program, knowing full well there would be some concern that it would be viewed as a reward for illegality although the Commission views it primarily as in the selfinterest of the United States to gain control over a policy that is out of control.

ADMINISTRATIVE AND BUDGETARY IMPLICATIONS

Now, what are the administrative and budgetary implications of these enforcement recommendations? I will go down the list and try to give you numbers that are as accurate as we can get. The Commission voted for recommendations that would require a substantial increase in border patrol funding to cover additional personnel, more rapid replacement of sensor systems utilized to monitor points at which undocumented aliens enter across the Canadian and Mexican borders, and additional equipment to make the agents more effective in their tasks.

The Commissioners also recommended more primary inspectors for port-of-entry inspections and suggested a mobile inspection task force that will allow enhanced inspections at particular ports so that fraudulent entrants would have greater fear of thorough inspection. I can tell you Senator DeConcini and I stood behind an inspector in Puerto Rico in the airport. We watched this one wonderful woman who was trying to do her best and who had developed some sophistication at being able to discern the difference between a Dominican accent and a Puerto Rican accent, and as she stood there and it was announced that a 747 to Miami and Atlanta would be boarding, she had to deal with the 300, 400 people rushing down that aisle and make some judgment as to who would be trying to come through without documents. That's just one of many such first-hand investigations that led Commissioners to make the recommendation for more primary inspectors.

The Commission supported the installation of a fully-automated nonimmigrant control system which would provide prompt information to track the initial destination of nonimmigrants and record their departure quickly and accurately and provide printouts of persons who had overstayed their approved visits to the United States.

The Commissioners felt that nonimmigrant visa abuse should be a priority among Immigration and Naturalization Service investigations, along with attention to the workplace.

An important point, Mr. Chairman, that many Americans do not appreciate, is that probably a quarter of the persons in this country illegally are here as visa abusers. I think I had one drive me over here in a cab. Marvelous fellow; works very hard, two jobs, studies accounting at the same time. He can't understand why Americans don't work hard. Perhaps about 25 percent of the persons who are here in this country illegally are persons who have come in with valid U.S. visas. The great fixation on Mexico, the great fixation on the southern border, is one that leads us to stray from the overall problem we face.

The inadequacy of present alien detention and deportation funds was noted and increased funding recommended, including the encouragement of repatriation to the interior of bordering nations and the assured return of other aliens to their country of origin. The Commission voted to require aliens to pay transportation costs of repatriation where it is possible for them to do so.

Finally, the Commission favored greater cooperation among governmental agencies with enforcement responsibilities along the borders. A number of specific things are outlined in the Commissioner's recommendations. The staff estimates that the total cost of all of these enhanced activities at the border and interior would be $44 million.

EMPLOYER SANCTIONS

The enactment of employer sanctions would require new institutional efforts by at least the INS and the Wage and Hour Division of the Department of Labor. Regardless of the implementation method, such a law would require substantial numbers of new personnel for investigative and clerical staffs.

The Commissioners did not achieve consensus on the mechanism to implement an employer sanctions law. The Commissioners voted 9 to 7 in favor of utilizing existing forms of identification. They voted 8 to 7 with one abstention for the use of a more secure system of employee eligibility verification.

Different employee eligibility systems have different cost requirements. We will supply the details on each of these. Implementation of a system utilizing existing documentation is estimated by staff to require annual operating expenditures of $30 million. Such a system would obligate employers to ask for and record having seen one or more documents evidencing citizenship, or permanent resident alien status, or work authorization if the person were a nonimmigrant alien.

Field investigators would monitor compliance and an appeals mechanism would exist for employees and employers.

That is a cheap system, the $30 million system, and has many liabilities.

Three more secure identification systems were considered by the Select Commission: an improved counterfeit-resistant social security card; a secure work eligibility card; and a call-in data bank system. Members of the Commission had different favorites among these three. Senator Kennedy and Father Hesburgh preferred the upgraded social security card. Secretary of Labor Marshall preferred the call-in data bank system. They have different reasons. There are different trade-offs and, in fact, there are differences in costs.

The developmental costs for designing and acquiring the computer and communications bases for the three more secure employee identification systems described above would range from over $80 to $290 million over the 5- to 7-year period necessary to put such system into place and make it overwhelmingly effective. Each would require preemployment enrollment through which eligibility was established with a card or unique number assigned to eligible workers.

These systems would be phased-in and would require a sizable enrollment and records staff as well as a field investigative force and an appeals system.

Senator WEICKER. Let me just say this: I know there are going to be questions and I want to make certain the Senators have an opportunity to ask those questions. If you could synopsize.

Mr. FUCHS. If you prefer, Mr. Chairman, we could submit the entire document and move right into the things that are on your mind. We

will try our best to respond to them. Let me point out we have also recommended a number of things which would bring about savings too.

Senator WEICKER. As I indicated, the entire statement is going to be included in the record.

Quite frankly, the subcommittee is going to have to read that document. It will clearly relate to our determination of the budgets. Having said that, I want to move on to the questions.

Senator Bumpers might just be outside and Senator DeConcini has questions.

CUBAN ENTRANTS

Let me ask you one thing. How do you differentiate, in this latest influx of Cubans into the United States—this is strictly a layman's guess, or opinion. I have not been in the immigration business. I am not that conversant with it. But if I had to guess, I would say the large percentage of those that came are not fleeing any sort of political injustice as much as they were coming here to be with relatives who, quite frankly, enjoy the better quality of life, better than that in Cuba. How do you differentiate between those who are political refugees and those who figure life is better in the United States?

Mr. FUCHS. It is a question that troubles not just the lay person, but is a question which troubles people who are involved in administering the Refugee Act of 1980. The Refugee Act of 1980 set forth a clear definition of refugee, adopting the refugee definition in the United Nations protocol. That definition does require the fear of persecution. Persecution is political. It means fear of physical threat, fear of torture, fear of imprisonment, fear of the kind of systematic threats and abuses that take place in the Soviet Union aimed at certain minority groups, and so on.

The fact of the matter is we do not now, in the opinion of the Select Commission, have a good system for making distinctions among those persons who come to the United States as a country of mass first asylum after fleeing directly from their country of origin. These people do not go to another country after leaving their homelands where we can process them systematically, interview them, go after the records, and so on, to enable us to make that designation as was done in the case of the Indo-Chinese refugees. When the Cubans were pushed from Cuba and came directly to this country claiming asylum we did not have a plan to deal with it. The confusion that ensued and the administration's response to that push-out was reflective of the fact that we did not have a good method for making that determination as to who is entitled to refugee status or to claim asylum.

The Commission has made a number of recommendations to deal with potential future mass first asylum situations. In our view, such situations are more likely to come not from, another Cuban push-out, but from situations like the Haitian migration streams—people leaving in leaky boats and they come here and say they are seeking asylum. This country accepts asylees under the Refugee Act. The question is, Are they bona fide asylum claimants? By what criteria do you make that determination and by what process? These are the questions commissioners faced and they made a number of recommendations. I think it is one of those issues which will always give us trouble, even if our

recommendations are followed and we get expeditious determinations on an individual basis with only one appeal to the new, independent article I immigration court the Commission recommended.

This Commission believes deportation will have to take place when persons fail to meet the criteria for asylum. The system we have recommended will get us much clearer determinations, much more quickly. That is the key. If you want me to go into the details of the system, I can do that.

Senator WEICKER. I was wondering whether my observations were incorrect or whether you—obviously you made some investigation of the Cuban situation—as to whether or not you had similar feelings that a large portion came because they wanted to be in the United States?

Mr. FUCHS. Even before the recent Cuban push-out, some of the Cubans who were coming to the United States were persons seeking economic opportunity.

Senator WEICKER. I think I speak for many people who feel very strongly that anybody who truly is in danger of their life ought to be given asylum. Now, it is another story when you get to the business of economic advantage. There are a lot of people around the world who would like to participate in that kind of opportunity.

Mr. FUCHS. Mr. Chairman, what has happened is that we have moved from an era in which our refugee policy was decided on an ad hoc basis, with ad hoc systems and mechanisms and ad hoc criteria. Refugee policy will always be a mix of foreign politics, domestic politics, and a standard—the standard you just set forth. We see it now in the allocation process. Allocation of numbers for refugees are set by the President to reflect, to some degree, foreign interests, international interests of the United States, and domestic political pressures to some degree.

Senator WEICKER. I do not mean to put words in your mouth. Do you say that, using as an example different treatment—let us say of the Cubans and the Haitians?

Mr. FUCHS. I would personally say that. I am not speaking for the Commission now. In the past that would be true. We had an ideological and geographically based definition of refugee. You had to come from a Communist country, or a Middle Eastern country to be considered a refugee. The Refugee Act of 1980 seeks to establish a universally applicable and fairer standard, but there is a lag time. We still have to get used to that system and to apply the new refugee definition. That is what I think will happen in the next several years as the administration of the new system unfolds.

Senator WEICKER. Senator DeConcini.

Senator DECONCINI. Mr. Chairman, thank you very much. Mr. Fuchs, thank you for the fine statement. I have had a chance to review some of it. Also let me for the record thank you for the service you and your staff put together serving the Commission. As a member of it, I was most impressed with the difficult problems that your staff faced and the professionalism used in developing this report.

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BORDER PATROL

I was pleased to see, Larry, in the report the vigorous enforcements of existing laws as part of our recommendation, and your statement this morning reemphasizes that. It does concern me as a member of this committee, Senator Hollings, and Chairman Weicker, very consistently sought to improve the enforcement and the management capability of our border enforcement. Senator Weicker, when he was a ranking member, often and almost always that I can recall, went along with those of us who would argue for greater amount of personnel for the border patrol and to improve them with equipment and facilities that were necessary.

In the fiscal year 1980 budget, the Congress increased the border patrol by 160 positions. Those positions were cut from the 1981 request. The 1982 Carter budget deleted them again. Now I understand the present administration plans even deeper cuts. My question to you is, from the standpoint of this recommendation and the work of the Commission, is it your own belief that the enforcement recommendations include an increase of the border enforcement even prior to the time of enacting a total package, if a package were put together and sold to the Congress and the people of this country?

Mr. FUCHS. The Commission did not vote on that specific question. It would be my interpretation that that is what most commissioners support and believe. I remember when Representative Hamilton Fish introduced an amendment on the floor about 8 months ago calling for a substantial enhancement of those resources and it passed very strongly in a voice vote in the House. I remember hearing from a number of Commissioners that that was a sensible thing to do, that one ought to get on with that. So I would interpret that sentiment to be supportive of those measures, even short of the other elements in the package.

To add just one footnote to that, however, I would also say, Senator DeConcini, I get the impression, from a majority of the Commissioners that they do believe that what Father Hesburgh calls demagnitizing the workplace is central to this effort. I think it is fair to say a majority of Commissioners believes that employer sanctions coupled with an employer responsibility and worker eligibility system is needed in the long run, given the enormous disparities and opportunity for work and advancement between the situation in the United States and countries to the South of us and around the world generally, that that demagnitizing effort is a centerpiece and one could never have enough resources to do the job in the long run without that system.

To add parenthetically now I want to say that I think everybody should have a boss as conscientious, as clear, able, and dedicated as Senator DeConcini of Arizona. I do not say that to embarrass you.

Senator DECONCINI. I have been waiting 18 months.

Mr. Fuchs, thank you.

The staff estimates the total cost in your statement here, $44 million. I think it is important, is it not, to get on the record here there is no recommendation that we appropriate that kind of money now, is it not the fact what is really recommended here is that Congress and hopefully this administration will proceed with legislation, go through the normal hearing process and if the substance of the report was adopted,

that that is the cost which would obviously come after the laws were enacted; is that correct?

Mr. FUCHS. Yes.

Senator DECONCINI. I think it is important that we siphon out from huge recommendations of financial expenses in a time that we are talking about reducing Federal expenditures, that these kind of funds would be necessary after the laws were enacted and the Commission, of course, is recommending some major changes.

Mr. FUCHS. That is correct, sir. Senator Simpson mentioned last night that it was his intention and that of Representative Mazzoli in the House to start hearings in late April or May on most aspects of the package. They are waiting for the administration which has set up a task force under the Attorney General to study the Commission's recommendations and will make its report on May 4 and then they will begin joint hearings and have Father Hesburgh come and lead them off and move ahead.

Senator DECONCINI. Going to some of the specifics quickly, the Select Commission calls for additional primary inspectors at certain entry ports that you and I visited. Does the Commission in particular review the situation at our international airports, and what recommendations can you give this committee that was found by the Commission?

Mr. FUCHS. I would like Ralph Thomas to speak to the port-of-entry problem since he has looked at in more detail. I think it would be an exaggeration to say the Commission spent much time on that, but the staff has. I really did not go into it. You had made some visits and some others did, but Dr. Thomas ought to respond to that because he chaired the group that worked all year long on that.

Dr. THOMAS. The staff looked at a number of port-of-entries with problems and utilized the findings of the fraudulent entrant study conducted in 1975–76 for the Immigration Service. They found problems of fraudulent entrants both at border points and at major international airports in the interior. There was clearly a need to have additional inspection staff so that you could maintain the integrity of the inspection process.

Two Commission recommendations addressed these problems. One, the Mobile Inspections Task Force—is a suggestion that has been around before—would provide additional inspectors for unannounced, enhanced efforts at problem ports, so that you are not staffing up to have a constant, very thorough inspection at each and every port-of-entry. So there was some compromise. The recommendation for additional inspectors was intended to alleviate some of the pressures at the major international airports and this was a matter of facilitation as well as enforcement.

Senator DECONCINI. Thank you, Ralph. Another question, Mr. Fuchs, on behalf of Senator Hollings, the Select Commission endorced the elimination of visas for nonimmigrants. And Senator Hollings' concern is: Was the FBI consulted about the concerns that might have additional hostile intelligence agents entering the United States under this procedure?

NONIMMIGRANT VISAS

Mr. FUCHS. I think somebody gave him the wrong information because the Commission did not endorse the elimination of visas for all nonimmigrants. There is, as you know, a recommendation to set up an experimental program on a reciprocal basis with a few countries that have a very low incidence of fraudulent entry. For example, Great Britain or Japan. The Commission did look with favor upon that experiment because, of course, it could be an efficiency measure, saving money. It also would show reciprocity with friendly allied nations which have a similar policy. So I think if that is what Senator Hollings is referring to——

Senator DECONCINI. I think that is what he is referring to, is the experimental limited basis, did we consult, did anybody consult with the FBI regarding a hostile intelligence agent entering under that——

Mr. FUCHS. No; not to my knowledge.

COMMISSION RECOMMENDATIONS

Senator DECONCINI. Also, regarding the life of the Commission, I think it should not go unnoticed that this Commission is going to vanish, is that correct, and the staff and everything is going to be gone within the next 30 days or so?

Mr. FUCHS. I may expire personally before the Commission does.

Senator DECONCINI. I think it is a credit to the Congress, quite frankly, to have created something that is going to end, that has done its job and submitted something for us to chew on and certainly a credit to you and the staff to complete this on time.

Let me ask you this. Is there any need, in your opinion, for any additional time for the Commission to finish its act, and I am not trying to drum up any additional expenditures or time, for that matter, but will you be able to button everything up, in your opinion, satisfy the mandate the Congress gave to you?

Mr. FUCHS. The honest answer to that is, no, not by the standards that we would like. The Congress would be well served if we had another 30 days only for which we have a voluminous set of additional materials to present to you that go far beyond this report. If my head of research, the editor, a writer, copy editor, two secretaries, and a word processor were available for another 30 days, you would get a much better product. You will be getting a redraft of the entire INA. The quality of that redraft, of course, depends upon the explanations and detail of comparisons made between the old act and the new act that the legal people have drafted. But there is still a considerable amount of editing to be done.

The second product you will be getting is a series of chapters detailing implementation of ID systems, legalization, visa processing under the new system, clearance of backlogs, and so on. Again, it is the difference between having a lot of stuff thrown at you, not that well edited, and having it done in a much more organized fashion. It is the difference between a B− and an A+. I always like an A+ for myself and my students. It is a moot question, Senator, although I appreciate the question because I am not even sure we have the $15,000 to keep

on those four people. I know Ralph and myself plan to go off the payroll. We would ourselves take the responsibility for another 30 days for the product because we care that much that you get the best possible product. I feel very badly that you will not. We also have to put together for you all of the research documents in a way that they will be referenced most clearly to the recommendations so that you have a complete package. I think it is a moot question.

Senator DECONCINI. That burden then will fall on——

Mr. FUCHS. Congressional staffs.

Senator DECONCINI. The congressional staffs of the various committees this will be referred to. Mr. Chairman, I have no further questions. I thank the Chairman.

Senator WEICKER. Senator Bumpers.

Senator BUMPERS. Mr. Fuchs, is this the document that contains the recommendation of the possibility of open borders between the United States, Canada, and Mexico?

Mr. FUCHS. No; it is not.

Senator BUMPERS. Just a moment, is this the one that intrigued the President.

Mr. FUCHS. This is not what he is intrigued with. I would love it if he was intrigued with it and he may be. People at the White House are giving the Commission's report a very friendly reception, there is no question about that. The President is intrigued with a proposal of Governor Clements of Texas and some others and he has been for some time. They are interested in the idea of a more free flow of persons, goods, and services across the borders to the south and to the north as well. He has talked about a North American Accord. I am not speaking for him. I took the trouble to read everything he has ever said on the subject because I want to get a sense of what the reception would be to our report.

Senator BUMPERS. One of the thrusts of this proposal is to legalize those who are here. We will be giving up the ghost on trying to deport that number of people. But there are 90,000 people unemployed in my State. That is a 9.3-unemployment rate. You know the economic devastation that wreaks on us. It occurs to me that we ought to be trying desparately to stop this flow of people into this country. Do you agree with that?

Mr. FUCHS. Exactly, yes we do. That is one of the reasons for the legalization program. I am sorry you were not here for the earlier part of the remarks. They are in the record and you can read them. Father Hesburgh's too. I personally agree with you strongly. This Commission, with the possible exception of one or two Commissioners, agrees with you too. They voted 16 to nothing for the legalization program. In fact, a legalization program may help to reduce unemployment. These people who are already here are people working two or three jobs. They are not protected by minimum wages.

We believe that in order to have a credible immigration policy—I think I speak for the Commission and I can be corrected by one of my bosses here—in order to have a credible immigration policy, one that the American people have confidence in, it is necessary to bring to a substantial end the continuing flow of undocumented workers into this

country, whether they come across northern or southern borders, through ports-of-entry, or by sea, as in the case Senator Weicker is talking about, when a person is not a genuine refugee but comes here to seek economic opportunity.

So the thrust is not on an open border. That may be a good idea for some time in the future when we have a different kind of a world and it is not organized by nation states——

Senator DECONCINI. Would the Senator yield?

Larry, is it not correct that there were some conditions attached to that 16 to 0 vote and the conditions were an enforcement procedure? It was my recollection that the Commission pretty well overwhelmingly felt that if you were going to have amnesty or legalization it had to be convincing to the American public that there was going to be a ceasing of the tremendous undocumented flow. I just wanted to make that clarification.

Mr. FUCHS. The triggering of the legalization program depends upon the institution of new, effective enforcement measures outlined here. The legalization program itself will add to the economic and social well-being of the United States and help to curtail future flows.

However, the Commission is so mindful that the American people will not have confidence in it unless they can be sure this is a one-time, get-it-behind-us kind of thing, so we do not waste our money on foolish cops and robbers exercises, that they linked the legalization program in a time sequenced way. That is, it cannot be done unless the Congress acts on enforcement first.

Senator BUMPERS. I think in order to make that proposition politically viable, you are going to have to do it the other way around. You are going to have to stop the flow for some period of time as proof that it can be done and then the idea of legalizing the illegals might be possible. But Mexico apparently takes umbrage in our efforts to patrol the borders even as extensively as we do. The population of that country by the year 2000 will be about 120 million people. I do not know what it is now.

Mr. FUCHS. 70.

Senator BUMPERS. I can remember being there in 1963 when it was 35 million. They just do not have the resources. Certainly they do not have any kind of industrial base to support that much work. I just think the flow is going to become massive and looms as one of the biggest issues facing this country.

Senator DECONCINI. If the Senator would yield, I agree with the Senator for one member of the Commission that stopping the flow ought to come first and be a precondition to the legalization. I think the Senator makes a good point from the standpoint of making that part of any legislation that the people of this country would be satisfied, by gosh, there is going to be a real stop of this illegal immigration. As that happens, then there will be legalization. Good point.

Senator BUMPERS. Mr. Chairman, I have one other question. Does the status of the Cuban refugees at Fort Chaffee change once they become sponsored and if so, what is the change?

Mr. FUCHS. Sponsorship does not change their status as such. They are here right now as "special entrants."

Senator BUMPERS. Incidentally, has anybody ever heard of such a term until Carter coined it?

Mr. FUCHS. Yes; if you look back far enough you can find that there is almost nothing new under this sun. We have had special entrants before. However, President Carter did not use the Refugee Act of 1980 as he could have and he was criticized on both sides by people such as Senator Kennedy for not using it and by others who said clearly they are not refugees under the terms of the act and therefore should not be admitted as refugees or special entrants. Efforts should be made to stop this flow of people.

So the Cuban/Haitains, those that have been accorded asylum status—they are being processed on a slow, arduous individual basis—will be able to adjust their status to permanent resident aliens after 2 years. Then they will no longer be special entrants. The direct costs to the States are being reimbursed according to the 100-percent formula of the Fascell amendment but they are not refugees. They are special entrants who have appealed for asylum.

Now that may seem like a lot of hair splitting to you, and it does to me. They are here, and their costs are high. A good many of those remaining in the camps have serious problems. The idea behind our recommendation is to expedite the processing of asylum claims so that people who do not meet the criteria are deported quickly. The United States remains a country for genuine asylees, but makes the determination on very clear criteria in a very efficient way. We made a number of recommendations to do just that.

Senator BUMPERS. I have no further questions.

Senator WEICKER. Thank you very much, gentlemen. We appreciate your efforts.

Mr. FUCHS. I have a footnote I must get in because I may never meet Senator Bumpers again. I want to say one of the problems with the legalization program in relationship to enforcement, is that the American people have to be reassured this is a one-time only legalization program. We have to get control over the flow. On the other hand, we have a practical problem and that is that legalization will give us vital information that is necessary in order to get control over the flows. I can send you a letter on that and spell that out. It is a practical dilemma.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. Thank you very much. The record shall remain open in order questions may be submitted by Senators Cochran, Chiles, and other Members of the committee who may wish to do so.

[The following questions were not asked at the hearing but were submitted to the Commission for response subsequent to the hearing:]

Questions Submitted by Senator Hollings

QUESTION 1:

Over the last few years this Subcommittee has recommended increases for the Border Patrol. The Carter Administration consistently thwarted those increases so that the number of positions requested for the Patrol in 1982 is 2,534, which is 160 less than in 1981.

In the report, the Select Commission recommends substantial increases in Border Patrol personnel and equipment. Could you quantify what you mean by "substantial" in terms of personnel?

ANSWER:

The Select Commission never voted for a precise number of positions nor a budet level. In background materials prepared for Select Commissioners, staff estimated that 250 Border Patrol agents should be added for a modest increase above current levels (on duty force of approximately 2,500). When the Commissioners voted they altered the wording to specify "substantial" increase in Border Patrol funding. Staff interpreted this to mean 500 additional positions or about a 20 percent increase.

QUESTION 2:

The Commission recommends that present law be firmly and consistently enforced against U.S. citizens who aid illegal aliens, and also endorses employer sanctions legislation. These types of activities probably would occur away from the Border. Does the Commission believe that the INS investigative personnel is adequate to carry out these recommendations?

ANSWER:

No. If employer sanctions legislation is passed by Congress as the Commission recomends, it will be critical to ensure that sufficient investigative personnel are available immediately to indicate our commitment to firmly and consistently enforcing our immigraton laws. However, depending upon the type of mechanism Congress legislates to aid employers in identifying those people authorized to work in the United States (existing documentation, more secure Social Security card, call-in data bank, etc.) enforcement might be carried out by one of several agencies (for example, the Department of Labor) in conjunction with INS. Thus, personnel increases might also be recommended for other enforcement agencies.

QUESTION 3:

There is a recommendation that Regional Border Enforcement posts be established to coordinate the various federal agencies operating on the border, i.e., INS, Customs, DEA, and the Coast Guard. At the same time, the Commission recommends retention of the present Federal Agency structure for administering U.S. immigration and nationality laws.

It would appear that the Select Commission started to lean towards a Border Management Agency, then was persuaded to back off and support the status quo. Did the Commission consider a Border Management Agency?

ANSWER:

There was discussion by the Select Commission about creating a Border Management Agency. However, the Subcommittee set up by Chairman Hesburgh to study the Immigration and Naturalization Service decided not to recommend such a reorganization. My understanding is that their decision and the subsequent vote by the full Commission was based on the following factors:

1) The administration of U.S. immigration policy would not be made more efficient or effective by such a reorganization. Separating interior and border functions into different agencies would be likely to increase rather than decrease inconsistency, duplication and delay rather than improve administration of our immigration and nationality law.

2) Reorganization always generates strong opposition, both within and between agencies, and traditionally new agencies face great difficulty in securing adequate funds and competent staff to implement their mission.

3) Recent informal efforts at inter-agency cooperation, including the EPIC Center in El Paso, Texas, appear to have been remarkably successful. Commissioners felt that proven, successful mechanisms should be encouraged rather than undertaking a major reorganization the results of which would be unknown.

QUESTIONS SUBMITTED BY SENATOR WEICKER

QUESTION:

The Commission recommends that "refugee clustering" be encouraged. What impact would such clustering--some might call them ghettos--have on the host communities in terms of financial and social costs?

From a philosphical basis, would it not be more advisable for the government to play a neutral role rather than encourage what appears to be a natural migration process?

ANSWER:

The Commission believes that the present practice of resettling refugees wherever there are sponsors needs to be reexamined because of the tremendous costs--both social and economic--involved in secondary migration.

Throughout our history, immigrants have settled together so that they might be with their friends and relatives, worship together, teach their chidren the customs and traditions of their home countries, help each other learn English and the ways of a new country, etc. However, the Commission also acknowledges that when these groups become too large in one area, they tend to strain local housing, social services, and labor market conditions.

The Commission therefore recommended that refugee "clusters" in groups of 2,000 to 5,000 people throughout the United States be encouraged. Such communities would provide newcomers with the social supports and sense of community each new group of immigrants throughtout our history has found essential for survival, but the cluster itself would not be large enough to impact significantly on a region.

The Commission also believes that resettlement should not be solely determined by sponsorship availability, but also by factors such as availability of jobs and housing, climate, other refugees nearby with similar backgrounds, etc. When five

Vietnamese are resettled in Northern Maine in the middle of winter, it is not surprising that six months later that family has decided to join a relative in Southern California, thereby exacerbating the already large build-up of refugees there. With preplanning and utilization of the cluster concept, the government will be able to encourage permanent resettlement and a more rapid adjustment to American society.

QUESTION:

What exactly is the employer sanction enforcement mechanism envisioned by the Commission?

ANSWER:

By a vote of 14 to 2, the Commission recommended making it illegal for employers to knowingly hire illegal migrants.

To enforce such a law, Commissioners recognzed that some means of identifying who was eligible to work was needed. A majority of Commissioners favored use of existing forms of identification (birth certificates, alien registration cards, military records, existing social security cards). Eight Commissioners also favored development of a more secure identification mechanism. Among the alternatives considered were:

-- upgraded, counterfeit-resistant social security card system;

-- call-in data bank system;

-- counterfeit-resistant card system (not linked to the social security card).

No separate vote was taken on which of the above proposed secure identification mechanisms was preferred.

In either pattern of a secure system--with or without pre-employment enrollment-monitoring of employers' records by a field investigative force and the existence of an appeals system for employers and employees would be necessary.

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QUESTION:

The employer sanctions recommended by the Commission require an enforcement process if they are to be effective. What do these increased resources add up to in terms of personnel and funds?

Who would do the enforcing? Federal, state or local authorities?

ANSWER:

The Select Commission staff made estimates for the design and implementation of different types of employer sanctions laws and employment eligibility mechanisms to implement them. I want to emphasize again that the Select Commission did not vote for the specific implementation systems or the resource and dollar figures that follow.

Implementation of a system utilizing existing forms of documentation/identification is estimated by staff to require an annual operating expenditure of $30,000,000. It could be introduced with a minimum amount of training of personnel and an informational campaign with employers and workers. The primary new personnel requirement would be field investigators, with 600 built into the above figure. Clerical staff and personnel needed for an appeals system and litigation function would add 250 more.

Three alternative more secure identification systems were considered by Select Commissioners, but they made no choice among them. In all of these systems, significant numbers of additional personnel would be required for the pre-employment enrollment of workers, issuance of employment eligibility cards or numbers, and maintenance of a computerized data base, field investigations, and an appeals system. Regardless of the existing resources and systems of the government agency responsible for enrollment and investigation, there would be developmental, training, and new personnel costs. Developmental costs for designing and acquiring the computer and communications bases for a more secure identification system would range from $80 to $100 million over a 5-7 year period depending upon the system selected. Annual operational costs for the initial 7-8 years during which 17 million workers (new entrants to the job market or new job changers) would be processed annually are estimated by staff at:

1) Counterfeit-resistant Social Security card issued or reissued for work eligibility purposes: 4,100 work years and $135-165 million.

2) Work eligibility card (unrelated to current social security card): 5,250 work years and $165-215 million.

3) Data Base/Call-in System: 7,250 work years and $235-295 million.

It is expected that only federal officials would be involved in the enforcement of the employer responsibility/employment eligibility law. Wage and working standards investigators for state government could recommend employment sites to federal officials based on their own observations. However, they would not have access to the records required for the employer sanctions program.

QUESTION:

Is the Commission's goal of finding an employee verification system that is reliable, cost effective and protects civil rights and civil liberties realistic? Is it achieveable within a reasonable length of time?

ANSWER:

Two primary arguments are raised by civil libertarians against a law prohibiting the employment of illegal migrants: First, that it would lead to discrimination against U.S. citizens and permanent resident aliens who seemed "foreign" in appearance or speech. Second, that the privacy of individuals would be invaded either through the very collection of personal information for the implementing system or because of inadequate controls over access to this information.

The potential for discrimination by employers against persons who appear "foreign" in speech or appearance has been of considerable concern to both proponents and opponents of employment eligibilty/employer responsibility legislation. The systems considered by the Commission are believed to be subject to nondiscriminatory application. However, the law and the implementing system could be challenged on the grounds that the regulations caused an employer to single out any one group for more detailed examination. The White Center for Law, Government and Human Rights of the University of Notre Dame in a report prepared for the Select Commission on employer sanctions concluded that on the basis of overriding national interest regarding closing the borders to illegal migrants "any additional questioning of a citizen's foreign appearance by an employer pursuant to a regulation would not violate any constitutional provision."* The White Center Report then cited the Supreme Court decision in Washington v. Davis in 1976:

> Nevertheless we have not held that a law, neutral on its face and serving ends otherwise within the power of government to puruse, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than another. Disproportionate impacts is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution.**

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*White Center for Law, Government and Human Rights, "Employment Sanctions" (South Bend: University of Notre Dame, October 1980), II:420.

**Washington v. Davis, 426 U.S. 229 (1976), page 242.

Finally, it should be noted that any employer who attempts to disguise national origin discrimination as compliance with regulations would be liable for a violation of Title VII of the Civil Rights Act.

At a Select Commission consultation on "Civil Liberties and a Work Card," Professor Alan Westin, among others, stated that the abridging of civil liberties and privacy rights of individuals could result from a work card or other employment eligibility system. He noted that large data banks are now so established and far reaching that a new labor force file would not in itself undermine civil liberties and privacy, provided abuses were guarded against by a constitutional amendment. It was proposed at the end of the session that any system--whether using a card or not--would have to meet the following criteria: all persons eligible to work must be included, not just a portion of the population who, because of status or ethnicity, might be singled out; no other use could be made of the system; strong penalties would be placed on private individuals or public authorities who attempted to use the system for other purposes; no information on the location of persons could be included; some kind of citizen review panel would monitor its use; and appeals against alleged abuse would be expedited.

After 19 months of study, the Commission believes that it has identified alternative employer sanctions mechanisms that would meet all of the above criteria. A systems utilizing existing documentation could be functional within a year of the passage of legislation. Each of the other systems could be fully implemented within eight years following a developmental phase. Workers within the presumed age range of undocumented/illegal aliens, 16-35 years, would be processed first. But it would still take 7 to 8 years to enroll the more than 100 million American workers in the employment eligibility program as they either changed jobs or entered the labor market for the first time.

Would such a system be cost effective? While it is true that the costs involved could be substantial depending upon the type of mechanism implemented, it is equally true that the costs of not implementing any system would be even greater. While the precise impact of illegal/undocumented workers on the marketplace is unknown, we do know that in various locales a substantial number of workers may be displaced. The Congressional Budget Office has estimated that he transfer payments for one unemployed U.S. worker for one year are between $7,000 and $8,000. There are also other costs to society of continuing to have a large group of people living and working within its borders illegally who are afraid to report public health problems, to send their children--who may in fact be U.S. citizens--to school, and who are exploited on the job and in the workplace.

QUESTION:

The Commission recommends that Border Patrol activities, port-of-entry inspections, equipment such as planes, sensors and helicopters be substantially increased in the INS budget. How many more people does the INS need to carry out the Commission's recommendations?

Has the Commission discussed with INS these recommendations?

Are the recommendations, reflected in the 1982 budget requests?

Did you estimate the total new requirements needed by the INS to carry out the Commissions' recommendations? Specifically,

for the additional Border Patrol personnel, interior enforcement, and equipment? Please provide details.

ANSWER:

Operations and strategies were discussed with INS personnel, but not the specific recommendations. Staff estimates of new resource needs were based on historical budget data. The Commissioners did not vote for the specific personnel and resource additions shown in the staff estimates below.

BORDERS

1. Border Patrol Funding	
a. Substantial increase in Border Patrol agents (500 to existing 2500) and their equipment.	$17,500,000.
b. Sensor systems ($2.5 million) and other technology	3,500,000.
2. Port-of-Entry Inspections	
a. Primary inspectors (increase of 200 above current 1300) plus travel money for mobile inspections task force ($.5 M)	6,500,000.
b. Replacement of border crossing cards	1,000,000.
3. Regional border encorcement posts (program, space, and communications costs)	1,000,000.
7. Repatriation from border to interior ($20 X 200,000) plus adequate funds for alien detention and deportation	4,500,000.
(Sub-total for Borders)	$34,000,000.

INTERIOR

5. Nonimmigrant Visa Abuse Investigations	
40 investigators @ $35,000/investigator	1,400,000.
6. Nonimmigrant Document Control	
Increases associated with purchase, installation, and training for implementation of fully automated system. Automation will produce some personnel savings.	5,000,000.
7. Deportation of Undocumented/Illegal Migrants	
Adequate funds to maintain high levels of apprehension (expected to increase due to other recommendations) and deportation. Net increase, although some savings due to requiring aliens to pay transportation costs where possible. Primarily funds to hold aliens in non-INS or federal facilities.	3,000.000.
8. Training of INS Officers: border patrol, inspections, and investigations, detentions, and investigations, detention and deportation)	1,600,000.
(Sub-total for Interior)	11,000,000.
TOTAL for Border and Interior	$45,000,000.

In addition, in a recommendation focused on economic deterrents in the workplace, but separate from employer sanctions recommendations, the Commissioners voted for enhanced workplace investigations by INS and the Wage and Hour Division of the Department of Labor. This was translated in a Select Commission staff estimate to mean an additional 100 investigators (and $3,500,000) for each agency.

Finally, the Select Commission has not made a comparison of its recommendations with the 1982 budget requests.

QUESTION:

How did the Commisson determine that more personnel and equipment were the answer to INS's enforcement problem?

ANSWER:

The Commission did not determine that more personnel and equipment were the answer to INS's enforcement problems. Commissioners strongly felt that current enforcement efforts were seriously underfunded and that was a main reason why enforcement has not been successful. The Select Commission recommended a three-part program to gain control over illegal migration: expansion of current enforcement efforts; institution of a new employer sanctons program; and legalization of those illegal/undocumented aliens currently within U.S. borders. Employer sanctions legislation is viewed as the linchpin of an interrelated effort to gain control over our immigration policy. But employer sanctions alone will not be sufficient unless there is increased conventional enforcement and a legalization program.

QUESTION

Legalization is coupled in the Commission's recommendations with increased enforcement. If the increased enforcement resources are not made available, should legalization be implemented?

ANSWER:

Commissioners voted overwhelmingly (12 votes yes; 1 vote no; 3 abstentions) that the legalization program should follow the institution of new, effective enforcement measures. While two Commissioners have stated publicly that they would favor a legalization program by itself, it is clear that this is not the view of a majority of Select Commissioners nor is this view reflected in the many separate ballots that were taken on enforcement measures, legalization, and phase-in of the proposed new immigration system.

QUESTION:

The Commission recommends that illegal aliens in the country as of January 1, 1980 be legalized on a one time basis. How many people would this involve?

How rapidly do you believe that it could be implemented?

How much would it cost?

ANSWER:

Since we do not know precisely how many illegal/undocumented aliens there are in the United States, this is a difficult

question to answer. In a study done by researchers at the Census Bureau for the Select Commission, it was estimated that there are 3.5 to 6 million illegal aliens in this country at any one time. A second unknown is the length of time and cut-off date Congress will actually adopt for the program. Assuming a January 1, 1980 cut-off date, and a two-year residency requirement, as many as 2.1 to 3.6 million people might be eligible. If our legalization program were 80 percent successful, unlike those held in Canada and Australia where the numbers who came forward were disappointingly low, then 1.7 to 2.9 million people might qualify. (This estimate does not include those relatives overseas whom the newly legalized aliens would be eligible to petition for.)

One of the acknowledged reasons for the failure of both the Canadian and Australian programs was their decision not to utilize voluntary and other agencies that had the trust of the illegal communities and to allow sufficient time for outreach efforts. Based on analysis of these two programs, Select Commission staff recommend that the eligibility period for legalization be one year, with start-up and phase-down time of six and three months respectively.

In part, the cost of the legalization program will depend upon the number of people who come forward. However, the Commission has worked on the assumption that the program will be self-supporting. A fee of $15-40 per principal applicant would be charged to cover costs incurred. The bulk of appropriated funds would be for temporary federal clerical personnel and for processing costs of voluntary agencies. Some increase in INS immigration examiners would be needed, if other responsibilities were not to be neglected during the legalization period.

QUESTION:

There is some discusson in the Commission's final report concerning the establishment of a new temporary worker program and the statement that no new program is needed. What was the basic rationale for the Commission's rejection of a new temporary worker program in addition to or as a replacement for the current H-2 program?

ANSWER:

While recommending that no new temporary worker program be established at this time, Commissioners recommended that the present program be streamlined and that the wage wedge in hiring foreign workers be eliminated. This decision was based on several factors:

1) The present program, with the minor adjustments described above, seems to be working well. Why institute a new program when the current one appears to be satisfactory given present needs?

2) Based on past experience with the Bracero program in which more than one million workers entered the country temporarily--a program which resulted in widespread exploitation of large numbers of these workers--a majority of Commissioners believe that the United States should never again enact such legislation.

   Historically, both in the United States and in Europe, temporary worker programs have in fact encouraged illegal migration as workers participating in these programs have "gained experience" in entering and locating jobs and housing.

3) There is great uncertainty about future U.S. labor market needs; many factors and their potential impacts are unknown. For example, if a legalization program in enacted, will that

population, many of whom we believe are now employed in seasonal agricultural work, continue in those jobs. Or, once legalized, will they move into high-paying industries? Once the wage wedge is eliminated, will domestic workers become more attractive to employers thereby reducing the need for foreign workers? Or will there be a shortfall in U.S. workers, as predicted by some population experts, necessitating the importation of even larger numbers of foreign workers in the future to meet U.S. economic needs? Given these unknowns, Commissioners believe it unwise to recommend a program to meet future needs when those needs themselves are presently unclear.

4) After studying the issue for 19 months, Commissioners came to the view that no temporary worker program--even one involving three to five million workers--could significantly reduce economic and population pressures in countries that are believed now to send large numbers of illegal migrants to the United States. Therefore, the Commission rejected the view that a large-scale temporary worker program would be a successful means to stem illegal migration to the United States and to serve as a "safety valve." Commissioners were also mindful that of the 3.5 to 6 million illegals estimated to be in the United States at any one time, less than half are thought to come from Mexico.

5) In considering any new program, Commissioners discussed its implementation feasibility. It was their view that any large-scale temporary worker program would be extremely difficult to administer. For example, standards or criteria for the new program would have to be established--who was eligible, from what country, for how long a period, to work in which industries, in what parts of the country, etc. If one million temporary workers entered, how would these criteria be enforced and at what cost?

Given these reasons, 14 Commissioners voted to retain the present program, with the proviso that their recommendation not preclude a slight expansion in the current program. Two Commissioners favored a broader program, perhaps involving as many as 500,000 workers annually.

QUESTION:

What do you mean when you say foreign aid can be "wasteful" and encourages migration?

ANSWER:

The relationship of foreign aid to migration is extremely complex. Research done for the Select Commission by AID indicates that at least initially foreign aid might stimulate migration. As a country develops economic and informational links, it seems that the middle class and "successful poor" (not the "desperate poor") may take advantage of increased wages and information about alternative work opportunities to finance migration to nations with greater economic opportunities. The Commission believes that further monitoring and evaluation of foreign aid programs is needed to target those strategies that are most effective in different situations both in the short and long term.

I do not recall stating that "foreign aid is wasteful," but I do believe that if the goal of foreign aid is solely to reduce migration, then our research has shown that in the short term the exact opposite may be true and foreign aid may in fact stimulate migration by those individuals most needed for development by their own countries.

QUESTION:

The Commission recommends establishment of a visa waiver process for tourists and business travelers from selected countries. What countries would qualify for the waivers?

ANSWER:

Countries that would qualify would be determined by the Department of State and would have both low rates of visa denials and low rates of visa fraud or overstays. As part of an efficency package introduced last session in the House and Senate, the State Department listed countries such as Japan, England, Switzerland, and Germany that might be included in a pilot visa waiver program.

QUESTION:

What criteria would be used to determine whether or not a country qualifies?

ANSWER:

The criteria would be low rates of visa denials and absence of a significant proportion of visa fraud or overstays.

QUESTION:

What would be the projected net impact of the change on the Federal budget?

ANSWER:

Initially, it is difficult to estimate what effect a pilot program would have. The staff suggested that any consular savings in selected posts initially resulting from reduced workload be shifted to increase nonimmigrant review at other posts with known high rates of fraud or overstays. Clearly, inspectors from the Immigration and Naturalization Service would have to give closer scrutiny to arrivals from countries participating in the program. Funds would also have to be available for an evaluation and impact study of the pilot program.

However, if the experimental program were successful and INS's planned computerized tracking system for nonimmigrant visas were in place, over time there might be considerable savings, as much as a 10 to 40 percent reduction in workload for selected consular posts overseas.

QUESTION:

The Commission recommends the establishment of a new set of ceilings and admission preference categories for immigrants. Could you please explain how this system would work?

Among the various preference categories, there is one for immigrant investors. How does this category fit into the nation's traditional immigration philosophy to take in "the tired, the hungry, the poor and those yearning to be free"?

Would this be the beginning of official sanction for "visa purchasing"?

ANSWER:

Ceilings

The Commission recommended a modest increase in numerically limited immigration from 270,000 to 350,000. The Commission also recommended that 100,000 additional visas be provided for the first five years to allow backlogs to be cleared. Immediate relatives of U.S. citizens would continue to be exempt from numerical limitation and country ceilings. Recognizing the importance of family reunification as a goal of immigration policy, the Commission recommended that a substantial number of visas be set aside for spouses and unmarried minor children of permanent resident aliens and that there be no country ceilings for this preference. However, the Commisison recommended the continuation of per country ceilings for admittance of other close relatives and for independent immigrants.

Admission Preference Categories

Enclosed is a chart comparing the proposed and current visa allocation systems. A main feature of the new system is that it clearly separates the two major types of immigrants--families and independent (nonfamily) immigrants--into distinct admissions categories.

Two groups have been added to the immediate relatives of U.S. citizens: adult unmarried sons and daughters and grandparents of adult U.S. citizens.

As you can see, the proposed system is not a radical departure from the present system but represents a clarification. The new system has the further advantage in that it enables the two groups--family and independents--to be treated differently. Thus the Commission recommended that to further the goal of family reunfication, there be a numerical limit but no per country ceiling applied to admission of spouses and minor unmarried sons and daughters of legal permanent residents.

Investors

Recognizing this nation's need for economic growth, fifteen Commissioners recommended the creation of a very small category (1,000 to 2,000 visas) for investors. The Commission also recommended that the criteria for the entry of investors should be a substantial amount of investment or capacity for investment in dollar terms (perhaps as high as $250,000) rather than the present $40,000 requirement set by regulation. The Commission concluded that admitting a very limited number of investors would be in the national interest and did not see their recommendation as "the beginning of visa purchasing."

However, the Reverend Theodore M. Hesburgh, Chairman, strongly disagreed with the majority. He said, "When immigration is so strictly limited, as it must be, it seems wrong to set aside 2,000 visas, out of a total of 350,000, for persons who come primarily to invest. There is nothing wrong with persons who wish to invest and investment is good for the United States, but the rich should not be able to buy their way into this country."

COMPARISON OF PROPOSED AND CURRENT VISA ALLOCATION SYSTEMS

	PROPOSED SYSTEM	CURRENT SYSTEM
Immigrant classifications		
I. Family reunification	* Separate category I for family reunification	* Family reunification preferences combined with occupational preferences
A. Immediate relatives of U.S. citizens	* Spouses * Minor unmarried sons and daughters * Adult unmarried sons and daughters * Parents of adult U.S. citizens * Grandparents of adult U.S. citizens	* Spouses * Minor unmarried sons and daughters * 1st preference * Parents of adult U.S. citizens * No provision
B. Other close relatives	* Spouses, minor unmarried sons and daughters of legal permanent residents	* 2nd preference
	* Adult unmarried sons and daughters of legal permanent residents	* 2nd preference
	* Married sons and daughters of U.S. citizens	* 4th preference
	* Brothers and sisters of adult U.S. citizens	* 5th preference
	* Certain parents (over age 60) of permanent resident aliens	* No provision
II. Independent immigration	* Separate category II for independent immigrants	* Occupational preferences combined with family reunification preferences
A. Special qualifications	* Immigrants of exceptional merit * Investors	* Qualified under 3rd preference * Qualified under nonpreference, when available
B. Other independent immigrants	* Other independent immigrants	* 3rd, 6th and nonpreference
III. Refugees	* Refugee Act of 1980	* Refugee Act of 1980
Annual Worldwide ceiling on Immigration	* 350,000 (plus 100,000 additional numbers per year for first 5 years)	* 270,000
Per-country ceilings	* Separate per-country ceilings for family reunification and independent categories * No per-country ceilings for spouses and minor unmarried sons and daughters of legal permanent residents * No distinction between independent nations and dependencies	* Standard 20,000 per-country ceiling * Standard 600 ceiling for dependencies

QUESTION:

The Commission recommends that the present Federal agency structure for administering U.S. immigration and nationality laws be retained. The Commission also recognizes that changes must be made within the agencies to address specific structural, management and attitudinal problems. How deeply did the Commission examine the agencies' management capabilities to institute the changes recommended?

ANSWER:

The Commission investigated administration and management in the Immigration and Naturalization Service in many ways. An in-house task force was set up to study the Service. Testimony was also solicited from witnesses--both in and outside of government--at the Commission's twelve regional hearings as well as several consultations that were held in Washington. Additionally, several staff met with members of the President's Management Improvement Council (PMIC) project at INS to gain their additional insights. It was the judgment of both PMIC and the Select Commission that with the additional internal changes recommended, the Immigration and Naturalization Service could successfully accomplish an expanded mandate. However, it should be stressed again that one of the recommended changes was sufficient funding necessary to carry out operations and it was generally recognized that if funding levels were not appropriate to the task, INS would be unable to carry out expanded responsibilities.

QUESTION:

The Commission recommends that the professionalism of INS employees be improved by establishing a code of ethics, increased training, recruitment of new employees with foreign language capability, vigorous investigation of and action against all allegations of corruption and sensitizing employees to the needs and perspectives of their clientele. What progress has INS management made in these areas?

Is INS in a position to make the most effective use of the increased resources recommended by the Commission?

ANSWER

During 1980-81, staff from the President's Management Improvement Council worked with key INS personnel to develop a long-term, far-reaching management improvement plan and identify specific implementation strategies. Key elements of that plan--including restating of agency objectives, a new code of ethics, more extensive pre- and in-service training programs, etc.--have been or will be implemented shortly. With these reforms and the upgrading of the INS Commissioner's rank and reporting responsibilities recommended by this Commission, the agency should be able to utilize increased resources in an extremely effective manner.

QUESTION:

One of the changes recommended is the clear organizational and budgetary separation of INS service and enforcement functions. What does this separation entail since the Commission rejects separation of the functions into different agencies and separate administrators already supervise these functions independently within INS?

ANSWER:

This recommendation was meant to indicate vigorous support for funding both the service and enforcement functions of the Immigration and Naturalization Service at a level adequate to fulfill these dual functions. Again and again, Commissioners reiterated their belief that many of the current problems at INS were attributable to the fact that INS has been treated as a stepchild of the Department of Justice and has not received sufficient financial resources to implement its mandate.

Questions Submitted by Senator Cochran

QUESTION 1:

One of the most disturbing occurrences of 1980 was the Cuban-Haitian influx which reached large scale proportions this past spring. Under these unique circumstances, the United States suddenly found itself to be a first-asylum country. Thousands of Cubans and Haitians landed on our shores without any legal authorization.

The difficult issues which remain unresolved are (1) how the Cubans and Haitians should be classified; (2) which of the provisions of the Refugee Act of 1980 should have been applied to the situation; and (3) what federal benefits should legally have been expended for these individuals.

In light of the Select Commission's mandate to "study and evaluate . . . existing laws, policies and procedures governing the admission of immigrants and refugees to the United States," I find it difficult to understand why these issues were not addressed. The Commission's recommendations on mass asylum were certainly helpful, but will not assist the Congress in dealing with the Cuban-Haitian entrant status which is in effect only until July 15, 1981.

I would appreciate your shedding some light on why the Commission did not make recommendations to Congress on what policy the United States should adopt in this circumstance.

ANSWER:

In the fall of 1980 after the Commission had been at work for more than a year, it received a special request from the White House to examine the Cuban-Haitian situation. Based upon staff analysis, a set of straw ballots and decision memoranda were prepared. I am pleased to enclose a copy of those materials. As Commissioners were divided on resolution of this issue and since a majority of our Congressional members strongly urged that the Commission not address this issue because it was currently before the full Congress, a report on the inconclusive ballot results was submitted for White House review.

The Commission was unanimous, however, in its belief that the present Cuban-Haitian situation is unique and that any decision made vis-a-vis this group should not automatically be incorporated into U.S. immigration law. What was needed, in the Commission's view, was a comprehensive set of recommendations to deal uniformly and fairly with potential future mass asylum claims. The following recommendations were adopted by the Select Commission to meet this need:

- The law should be firmly and consistently enforced against U.S. citizens who aid aliens who do not have valid visas to enter the country.

- An interagency body should be established to develop procedures for handling possible mass asylum emergencies, including contingency plans for opening and managing federal processing centers.

- Mass first asylum applicants should continue to be required to bear an individualized burden of proof. Group profiles should be developed and used by processing personnel and area experts to determine the legitimacy of individual claims.

- Responsibility for developing and issuing group profiles should be given to the U.S. Coordinator for Refugee Affairs.

- The position of asylum admission officer should be created within the Immigration and Naturalization Service (INS). This official should be schooled in the procedures and techniques of eligibility determinations. Area experts should be made available to these processing personnel to provide information on conditions in the source country.

QUESTION 2:

Last year Attorney General Civiletti issued an order which in effect suspended enforcement of the immigration laws so as to encourage illegal aliens to report for the Census. In addition, the government spent a great deal of money in ads to further encourage illegal immigrants to report. The use of the Census is now highly controversial, with one problem being that count of illegal immigrants. Since this subcommittee is concerned with appropriations for the Immigration Service, and our colleagues on the Treasury Subcommittee deal with appropriations for the Census Bureau, I think we would all welcome information on why the Commission did not address the policy created by the Attorney General by virtue of his order.

ANSWER:

At its second meeting, held on October 9, 1979, Commissioners unanimously voted not to take a position on any pending legislation or administrative actions. Individual members were urged to make their views known, but the Commission as a whole decided not to address any legislation or administratieve action currently before Congress.

QUESTION 3:

In addressing the question of employer sanctions and an employment verification system, the Commission was unable to reach a consensus as to the specific type of identification that would be required. The complete lack of direction by the Commission on this issue is certainly disillusioning and I'm wondering how specifically the issue was studied by the Commission.

For example, based upon the 9 to 7 vote by the Commission favoring employer sanctions with some existing form of identification, did the Commission inquire and receive a response from the Social Security Administration on the possibility of using Social Security cards as a means of employment verification?

ANSWER:

Under the direction of Chairman Hesburgh, who is particularly interested in the question of employer sanctions and an employment verification system, the Commission undertook a thorough analysis of various alternative mechanisms, their costs, potential implications, administrative feasibility, agency receptiveness, and other factors. Our SCIRP task force was headed by a detailee

from HHS, Mrs. Joan Loeff, who coordinated an interagency group consisting of representatives from the Departments of HHS, Labor, Justice, INS, OMB, and the State Departemnt as well as representatives from the academic and public community. The group met for 6 months to review existing research, listen to experts, hold special consultations on issues such as the civil liberties implications of a secure form of identification, cost-out proposed alternatives, etc. A summary of their findings was presented to Select Commissioners prior to their December/January delibertations at which final recommendations were made. This detailed analysis will be published in an accompanying staff volume to be available May 1, 1981. (As you may know, the final report of the Select Commission contained only a brief description of the Commission's 104 recommendations. The Staff Report will give further background, analysis of the alternatives, and implementation strategies for major recommendations. As our legislation called for submission of final recommendations by March 1, 1981, it was not possible to complete both volumes simultaneously. Hence the staggered publication of the Commission's Final Recommendations on March 1, 1981 and Staff Report on May 1, 1981.)

With regard to the Social Security Administration's response to use of its card as a means of employment verification, several SSA staff who met with the Commission were very helpful in reviewing problems and necessary steps to institute such use. However, HHS Secretary Patricia Roberts Harris, who was a member of the Select Commission, was strongly opposed citing violation of individual civil liberties, as well as a diversion of the card and the SSA from its historical and legislated purpose.

QUESTION 4:

David North of the Center for Labor and Migration Studies prepared a report for the Select Commission entitled, "Enforcing the Immigration Law: A Review of the Options." That report included a segment on revenues, particularly "user" fees, wherein an increase in current fees is proposed along with the imposition of additional moderate user fees for other immigration activities.

The projected income from a system of modest fees can be as much as $599 million in additional revenues each year. During this time of financial duress, and particularly in light of the Commission's recommendation to increase appropriations to the Border Patrol, I'd like to know why the Commission did not in any way address this subject.

ANSWER:

David North prepared a very useful review of enforcement options for the Select Commission. Although several Commissioners emphasized the need to bring current immigration application fees in line with actual costs, there was little discussion and no vote taken about new fees to support enforcement operations. Mr. North's recommendations were discussed at a number of Select Commission consultations, including one that dealt with the inspection function.

Sixty percent of the revenues included within Mr. North's figure of $599,000,000 would be raised by a $9.00 fee for the issuance of work eligibility cards or numbers as part of an employer responsibility/employment eligibility program. The Select Commission took no position as to whether U.S. workers should pay a fee, if the program implementing an employer sanctions law included preemployment enrollment and issuance of a card or number.

The vast bulk--$233,000,000--of the remaining revenue in Mr. North's analysis was to be raised from travelers coming or returning to

the United States.* The United States has historically encouraged such travelers, believing that their visits are economically beneficial. Although some American airports charge departure fees, inspection fees on entrants or returnees have been discouraged by the travel industry.

Similarly, non-immigrant visas have no fee, as the government has not wanted to levy a charge on the tourist or business visitor whose travel or purchases are believed to generate tax revenues that more than offset the cost of processing the visa application.

Although inspection fees could be collected through toll booths at land border ports as Mr. North suggested, the process would have to be designed so as not to slow further traffic at the busiest ports. The Select Commission heard testimony from border chambers of commerce and the airline industry attesting to probelms arising from the slowness or inconvenience of inspections at ports given current personnel levels. Only in reissuing counterfeit-resistant border crossing cards to Mexican citizens already holding older versions did the Select Commission staff recommend that a fee be charged persons entering this country.

Whether or not to impose user fees on foreign visitors is a valid question, particularly in a time of budgetary restraint. I would not suggest that the Commission's public hearings nor Mr. North's report provided a thorough examination of this matter which potentially may impact very heavily on the U.S. tourist industry.

QUESTION 5:

The Commission recommended that Border Patrol funding levels be raised to provide for a substantial increase in the number of personnel, replacement sensor systems, additional light planes, helicopters and other needed equipment.

Did the Commission explore and does it have specific information on what "substantial increase" means in dollar terms based on what is necessary to effect its enforcement recommendations?

ANSWER:

As mentioned in Dr. Fuchs' statement, the Select Commissioners did not vote for specific resource levels or dollar figures, although they did recommend increased personnel and a "substantial" increase in Border Patrol funding. The staff estimate developed in keeping with this emphasis and language totals $21,000,000 for the first year. This includes: $17,500,000 for 500 additional personnel above the current level of 2,500 and some necessary additional equipment, including vehicles; an increase of $2,500,000 to allow more rapid replacement or expansion of sensor systems; and $1,000,000 for maintaining an expanded helicopter and aircraft fleet or other technology that extends the effectiveness of Border Patrol agents.

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*$2,000,000 was to be raised from fees charged to educational institutions for issuance of documents to potential foreign student enrolees. $4,000,000 was to come from the inspection of crewmen from foreign ships.

QUESTION 6:

Until recently, the Immigration and Naturalization Service did not have reliable information on the location and status of foreign students in this country. The Commission recommended that the current restrictions on foreign student employment be retained but that the processing of work authorization requests be expedited.

Based on the difficulties INS has had with administrative functions in the past, such as the New York INS office being 6 months behind in opening its mail, what specific changes need to be made and can be made within the agency in order to make expeditious consideration even possible, and what level of funding would be necessary to effectuate that proposal?

ANSWER:

A fully automated Non-Immigrant Document Control system should have as an adjunct a locating and status index for foreign students. Although this will not relieve all INS administrative problems, it should contribute to the efficient processing of foreign student requests for employment authorization. The staff estimate for expedited review of these requests was ten adjudication work years spread across the Service or $300,000.

QUESTIONS SUBMITTED BY SENATOR CHILES

QUESTION:

I noticed in your report there were a number of funding recommendations for the Immigration and Naturalization Service. Specifically, the Commission recommended a substantial increase for Border Patrol operations and port of entry inspections. The Commission also recommended that high priority be given to the training of INS employees so that they will better be able to enforce our immigration laws.

In spite of these recommendations for increased INS funding, the Commission's report states that increased funding and effort by INS by itself will never be effective in the absence of employer sanctions aimed at discouraging employers from hiring illegal aliens. I agree completely with that conclusion. Until we eliminate the economic incentive for illegal aliens to come to this country they will continue to come.

I was therefore pleased to see that the Commission recommended that legislation be passed making it illegal for an employer to knowingly hire undocumented workers. In order to enforce such a law it would be necessary for the employer to have a reliable means of verifying employment eligibility. It was interesting to me in reading the report that the Commission members seemed to be equally divided on the questions of whether or not a more secure identification system such as a worker card was necessary.

Exactly what is the Commission'sview with regard to the need to have a more reliable identification system such as a work card?

ANSWER:

Select Commissioners agreed that a reliable identification system (either upgrading of current documents or institution of a totally new system) was an essential adjunct to enforce

any employer sanctions law. Specifically, a majority (9 to 7) of Commissioners voted for use of existing identification mechanisms as a means of verifying employment eligibilty. Several of these Commissioners stated their hope that current documents (birth certificates, social security card, etc.) could be made more reliable and counterfeit-resistant.

By a vote of 8 to 7, with one abstention, Commissioners also voted to recommend a more secure form of identification (counterfeit-resistant work card, upgraded social security card, and call-in data bank were among the forms discussed).

QUESTION:

Are there any improvements to current identification systems that would make them more reliable as a means of identifying eligible workers? Please describe these improvements to the Subcommittee.

ANSWER:

One problem faced by all current identification systems is that the initial identifiers (most importantly, a birth certificate) used to establish identity and place of birth are all counterfeitable and extremely difficult to verify. There is no U.S. National Birth and Death Register as in Great Britain that matches deaths with births and provides computerized verification on a call-in basis. Today the United States is a patchwork of thousands of different town, county, state, church, and medical records not linked with death records. Although extremely difficult, costly and time consuming (perhaps more than 20 years) to achieve, development of U.S. National Birth and Death Registry would be a great step forward that would not only aid immigration enforcement but would also benefit medical researchers.

Another mechanism discussed by Commissioners was development of a more secure social security card.

QUESTION:

Could a system be devised to accommodate the major concerns of the civil libertarian groups? If so, how would that be done?

ANSWER:

This answer would parallel the response to the comparable question asked by Senator Weicker.

QUESTION:

Did the Commission examine any alternative worker identification systems? Please describe for the Committee what alternative identification systems might be used. What would the cost of such systems be?

ANSWER:

This answer would parallel the response to the comparable question asked by Senator Weicker.

QUESTION:

I was pleased that the Commission addressed the issue of planning for asylum emergencies, and that a recommendation was made for contingency planning for handling mass asylum emergencies. Would you elaborate on the Commission's recommendation for an interagency body to develop procedures for handling possible mass asylum emergencies.

ANSWER:

The Commission recommended that an interagency body be established to develop procedures for handling possible mass asylum emergencies in the future. A variety of agencies need to be involved, including the White House; the U.S. Coordinator for Refugee Affairs; the Departments of State, Justice, Health and Human Services and Education; INS; the Department of the Army, the Federal Bureau of Investigation and the Central Intelligency Agency. It was hoped that this inter-agency group would review and draw up plans to implement the Commission's package of recommendations on mass first asylum. Particularly important is the development of clear policy guidelines and mechanisms to discourage and, if possible, interdict large groups of people at sea who seek to enter the United States without valid documentation and who are ineligible to claim asylum.

QUESTION:

One of the continuing problems in Florida are aliens arriving on our shores and now at Miami International Airport, with fraudulent visas, or in most cases, undocumented. Once here, they seek to stay through our asylum procedures. Were the legal and Constitutional protections accorded asylum applicants explored by the Commission?

ANSWER:

Yes, the legal and Constitutional protections accorded asylum applicants, especially the United Nations 1967 Protocol Relating to the Status of Refugees to which the United States is a signatory, were addressed by the Commission recommendations on mass first asylum fully comply with the national and international protections accorded asylees. The Commission did recommend that there be only a single appeal to a denied asylum petition.

QUESTION:

Your report indicates that there was not unanimous support for the operation of federal asylum processing centers. What other alternatives were explored to handle asylum applicants?

ANSWER:

A majority of Commissioners recommended that plans be drawn up to open federal asylum processing centers in the event the United States had to respond to mass asylum emergencies in the future. Some Commissioners not favoring this recommendation stated that no centers should be established since they believed illegal/undocumented migrants should be turned back at sea before reaching U.S. territorial waters. Among those Commissioners favoring the establishment of federal asylum centers, there was agreement on the need to internationalize resolution of the problem. It was thought that after multi-

national discussions international processing centers might be established within the Carribean perimeter and elsewhere to further this goal.

QUESTION:

What level of funding increase does the Commission recommend for INS?

ANSWER:

The Select Commission made no specific recommendation regarding the funding level of INS. However, it did conclude that INS enforcement efforts were underfunded. Specific recommendations in this and other areas would require increased appropriations for implementation.

MARINE MAMMAL COMMISSION

STATEMENT OF DR. DOUGLAS G. CHAPMAN, CHAIRMAN

ACCOMPANIED BY:

JOHN R. TWISS, JR., EXECUTIVE DIRECTOR
ROBERT EISENBUD, GENERAL COUNSEL
DR. ROBERT J. HOFMAN, SCIENTIFIC PROGRAM DIRECTOR

BUDGET REQUEST

Senator WEICKER. Our next request is that of the Marine Mammal Commission. The amount requested is $672,000, a decrease of $18,000 over the 1982 base, and provides for eight permanent positions.

Appearing on behalf of this request is Dr. Douglas Chapman, Chairman, who is accompanied by Mr. John R. Twiss, Jr., Executive Director, Mr. Robert Eisenbud, General Counsel, and Dr. Robert J. Hofman, Scientific Program Director.

PREPARED STATEMENT

Dr. Chapman, we will be pleased to include your statement in its entirety in the record at this point. You may proceed with whatever abbreviated version you care to. I am sure we will have questions to ask of you at the conclusion.

[The statement follows:]

STATEMENT OF DOUGLES G. CHAPMAN

Good afternoon, Mr. Chairman, and Members of the Committee. My name is Douglas Chapman, and I am Chairman of the Marine Mammal Commission. It is a pleasure to appear before you once again. With me are John R. Twiss, Jr., Executive Director, Robert J. Hofman, Scientific Program Director, and Robert Eisenbud, General Counsel.

Background

The Marine Mammal Protection Act of 1972 established the Marine Mammal Commission as an independent agency with responsibility for developing, reviewing, and making recommendations on actions and policies of all Federal agencies with respect to marine mammal protection and conservation. In addition, the Act also charged the Commission with undertaking studies to further protect and conserve marine mammals. In light of these responsibilities, Congress has from time to time asked the Commission to study specific issues.

In FY 1980, for example, Congress appropriated the Commission $300,000 for work on the protection and conservation of the Florida manatee, the Hawaiian monk seal, and cetaceans of the Northwest Atlantic. We have fully described the uses to which we put that money in our Annual Report, and I believe that we met our commitment to you to radically improve matters with one-time investments. Rather than use this time to go into details covered in our Report, I shall be pleased to address any questions which you may have on our work in these areas.

Last year, Congress appropriated the Commission an additional $100,000 for work on one or more of the following issues: marine mammal-fishery conflicts; the optimum sustainable population concept; marine mammal conservation in the seas surrounding Antarctica; California sea otters; and return of marine mammal management to the State of Alaska. Having consulted with our Committee of Scientific Advisors and others expert in each area, we plan to use the $100,000 to: convene

a group of experts to assess all on-going marine mammal-fishery interaction programs and provide guidance for further necessary work (estimated cost, $10,000); strengthen the Federal/State study of marine mammal-fishery interactions on the Columbia River by supporting population surveys and analyses needed to resolve the problems (estimated cost, $25,000); convene experts to identify and take appropriate steps to further expand the incorporation of the optimum concept into international management policies and practices (estimated cost, $25,000); describe and make recommendations on the steps needed to implement the Convention on the Conservation of Antarctic Marine Living Resources and identify criteria for predicting and mitigating the effects of possible Antarctic offshore oil and gas development (estimated cost, $15,000); start a study to compile and map biological, ecological, and socio-economic information needed to determine the optimal management strategy for the California sea otter population (estimated cost, $10,000); and facilitate the collection and evaluation of available information concerning species that would be affected by return of marine mammal management to the State of Alaska (estimated cost, $15,000). As we progress in each of these areas, my staff will be in touch with yours.

FY 1982 Objectives

In FY 1982, we shall continue to meet our statutory obligations to: recommend actions to agencies to further protect and conserve marine mammals; coordinate domestic and international research efforts to assure meaningful results and prevent wasteful, duplicative research; undertake studies addressing marine mammal protection and conservation problems; make recommendations to agencies on permits to take marine mammals; make recommendations to agencies on waivers of the moratorium, the resumption of state management, and related matters; and make recommendations on international negotiations affecting marine mammals.

While meeting these statutory responsibilities, the

Commission will also concentrate on: operation of the international commission and scientific committee to be established under the Convention on the Conservation of Living Resources of the Southern Ocean; overview of marine mammal management by the State of Alaska if, in fact, management has been returned; facilitation of the cooperative resolution of marine mammal/fishery conflicts; further implementation of the "optimum sustainable population" concept in domestic and international management policies and practices; obtaining the optimum sustainable sea otter population in California through translocation; assisting in the planning and coordination of Federal research/management programs -- particularly with respect to species in serious jeopardy; and maintaining a close overview of management and research activities affecting species or habitats of critical concern.

With respect to the Antarctic, the Commission first pointed out the need for a Convention on the Conservation of Living Resources of the Southern Ocean in 1975. Since then, we have been the lead agency with respect to biological input on negotiations affecting the Convention. We expect that the Convention will enter into force later this year and that the Antarctic Commission established under the Convention will then start its work. We intend to provide the Department of State continuing advice as to actions which we deem it appropriate for the United States to pursue within the Antarctic Commission so as to best conserve the region's living marine resources.

We shall also continue to emphasize return of marine mammal management to Alaska, an issue discussed at length in our recent Annual Report. If the return of management is to go smoothly, both State and Federal Governments will have had to agree upon standards by which State management is to be annually reviewed, and we want to make sure that this occurs. That will ensure that there are no surprises for either the State or the Federal Government and that confusion and confrontation are

avoided. I am, incidentally, encouraged by the consultations which my staff has had with representatives of the State of Alaska in late 1980 and early 1981, and feel that these bode well for an eventual resolution to this nagging problem.

Two main factors are involved in the California sea otter situation; first, serious threats are posed to the population by large oil spills, and second, otters are viewed as competitors by various commercial and recreational shellfish fishermen. To help resolve the issue, the Commission is going to facilitate production this year of an overlay map which will set forth relevant biological, economic, and other considerations so that the issues are clearly outlined for all interested parties. Given the maps as a common discussion point, we believe that those involved in the issue will be able to work towards agreement on appropriate solutions and it is our intention to help them.

We shall continue our reviews of Federally-supported marine mammal research in FY 1982. Our earlier efforts to coordinate and direct research activities involving many agencies and private groups have improved the scientific quality of the work and have resulted in substantial savings to the government as a whole. An excellent example is our work on bowhead whale research. We shall critically review Federally-supported research programs to the fullest extent possible and pay special attention to research on species in jeopardy such as some of the great whales, the manatee, and the Hawaiian monk seal.

Whereas we have, in the past, relied upon our ability to support large research projects directly applicable to areas of concern, we shall not support large projects in FY 1982. Instead, the roughly $115,000 available for research and studies will be invested in convening special review groups to make recommendations directed towards resolving specific problems and on supporting small contract studies that will be important in assisting Federal and state governments in cooperative efforts to address marine mammal issues. We shall thus use

our resources more for purposes of overview and guidance and as a catalyst to assure the accomplishment of critical tasks.

Conclusions

The Commission has been instrumental in, among other things: developing domestic policies to protect and conserve marine mammals; providing guidance with respect to international negotiations affecting marine mammal conservation; developing ecologically sound marine mammal management practices; developing biologically and legally constructive approaches to requests for waivers of the moratorium; working with state governments on marine mammal conservation and protection; directing research efforts to further conserve marine mammals; objectively exercising its overview responsibilities to guide agencies in addressing critical issues; insuring that agencies enforce the provisions of the Act; and providing an overview of activities conducted pursuant to the Act.

For FY 1982, the Administration requests $672,000 to allow the Commission to continue this important work.

DUTIES OF THE COMMISSION

Dr. CHAPMAN. Thank you, Senator. We are pleased to be here this morning. You have given the first part of my statement. I was going to introduce my colleagues here.

Thank you for putting our statement in the record. I would like to make a few comments with respect to it. As you know, the Marine Mammal Protection Act of 1972 established the Commission as an independent agency with responsibility for developing, reviewing, and making recommendations on actions and policies of all Federal agencies with respect to marine mammal protection and conservation. In light of these responsibilities, Congress has from time to time asked the Commission to study specific issues.

For example, the Congress appropriated the Commission $300,000 for work on the protection and conservation of the Florida manatee, the Hawaiian monk seal, and cetaceans of the northwest Atlantic. Those matters were reported on in our annual report which I believe you have. I do not want to go into any details here. We certainly will be glad to address any questions you may have.

Last year the Congress appropriated the Commission an additional $100,000 for work on one or more of the following issues: marine mammal-fishery conflicts, the optimum sustainable population concept,

marine mammal conservation in the seas surrounding Antarctica, California sea otters, and return of marine mammal management to the State of Alaska.

In consultation with our Committee of Scientific Advisors and others, we have developed plans to use the $100,000 to: convene a group of experts to assess all ongoing marine mammal-fishery interaction programs and provide guidance for further necessary work, estimated cost is $10,000; strengthen the Federal/State study of marine mammal-fishery interactions on the Columbia River by supporting population surveys and analyses needed to resolve the problems, estimated cost $25,000; convene experts to identify and take appropriate steps to further expand the incorporation of the optimum concept into international management policies and practices, estimated cost $25,000; describe and make recommendations on the steps needed to implement the Convention on the Conservation of Antarctic Marine Living Resources and to identify criteria for predicting and mitigating the effects of possible Antarctic offshore oil and gas development, estimated cost $15,000; start a study to compile a map, biological, ecological, and socioeconomic information needed to determine the optimal management strategy for the California sea otter population, estimated cost $10,000; and to facilitate the collection and evaluation of available information concerning species that would be affected by return of marine mammal management to the State of Alaska, estimated cost $15,000.

As we progress in each of these areas——

Senator WEICKER. I have read in detail both of what has been done and your expected goal.

Let me ask a question, for example, on the manatee study, is that completed?

Dr. CHAPMAN. The manatee study is one that I will briefly address but would like Mr. Twiss to respond to fully. The manatee is a long-term project on which we have worked with State of Florida agencies, the Fish and Wildlife Service, and others. We put together the plan for the coordinator who is to be in action for at least 3 years, and we also took the steps to develop the education work and enforcement workshops. The State has taken many actions to improve both the enforcement and education aspects of the manatee problem. I think considerable progress has been made to improve the situation. It is clearly not going to be something that is going to be completed over night. It is going to be a long time before we can even be sure the manatee problem is finally resolved.

Senator WEICKER. Let me, if I can, move forward with the questions and then give you any opportunity to go ahead and add to the responses.

I understand that you have recently returned from a meeting of the International Whaling Commission. Was any progress made on the whaling moratorium or other issues deemed significant by your Commission?

Dr. CHAPMAN. No; it was not a very satisfactory meeting from which I have just returned. The working group of the International Whaling Commission's Technical Committee met in Tokyo to consider recommendations for revisions to the management procedures utilized by the

IWC to set commercial whaling quotas and thereby meet some of the concerns that the United States and other conservation countries and groups have expressed with respect to the present management procedures of the IWC.

This meeting was convened to review, refine, and attempt to reach agreement on the recommendations of a working group of the IWC's Scientific Committee which had met in 1980. It developed proposals, which we considered reasonable, for revising the management procedures. They would provide a procedure for reducing whaling in recognition of uncertainties and would provide safety factors to recognize those uncertainties where whaling is being conducted.

Representatives of those countries that are still whaling, led by Japan, were very adamant at the meeting and argued for a position that was really for the protection of the whaling industry rather than the whales. The nonwhaling, conservation-oriented countries were not strongly represented and we did not achieve the success we had desired. I think we will have to continue to work on this matter and we must include it in our plans for activities in the next months prior to the regular meeting of the International Whaling Commission in Brighton, England, in July. I believe we need to focus world conservation opinion on the whaling countries' stance. I believe they took a position which even they will be unhappy with when they look at it carefully and in the light of public opinion. They were, however, quite adamant in the small Tokyo meeting, and held out for a position which was not responsive to the problems identified by the IWC's Scientific Committee. As a result, participants could not agree on changes to the management procedures and another meeting is to be held this spring. The United States will need to take a strong position on this issue and try to work toward getting regulations put into effect that meet the concern for whale conservation and/or continue to press for a moratorium.

Senator WEICKER. Since the resignation of Richard Frank, has another U.S. commissioner on the International Whaling Commission been named?

Dr. CHAPMAN. Not that I am aware of. We did not have a commissioner present in Tokyo. That is one of the gaps in the situation.

Senator WEICKER. Maybe that is something you can bring to the attention of the administration.

Can you tell us the status of the East Coast Whale Research Project since you have become involved with this issue in 1980?

Dr. CHAPMAN. I would like to turn that over to Dr. Hofman.

Dr. HOFMAN. Much of what I shall say, Senator Weicker, is in our annual report. I think you know that when the Commission was appropriated the $100,000 for fiscal year 1980, the first thing we did was to convene a workshop to identify clearly what the problems were. As a result of that workshop, it was apparent that some available information had not been either compiled or evaluated, and that there was a need for additional surveys to determine numbers and distribution, particularly in and around the Eastport, Maine area. There was, for example, little known about the harbor porpoise as well as some problems with harbor seals and fishery interactions and a great many questions concerning humpback whales in the North Atlantic.

Based on the workshop report, the Commission contracted for a number of studies, including a study to compile information collected on whales in the Cape Cod area. We transferred funds to the National Marine Fisheries Service to support a distribution survey of large whales and initiate a harbor porpoise program, and also provided funds to organize and convene a workshop on humpback whales at the New England Aquarium in December.

The current situation is that results have indicated there were more whales than had been previously expected in the Eastport area. Harbor porpoise work has been initiated, and we expect the National Marine Fisheries Service to continue that program provided funds are available.

The humpback whale workshop was very, very successful. It identified a number of things that needed to be done and perhaps most importantly brought together key scientists from Canada and the United States. The meeting had tremendously beneficial effects other than simply problem identification and exchange of research information. In fact, all the scientists, including the Canadians, subsequently formed a group which will meet annually to follow up and look at these problems.

Senator WEICKER. Thank you. What effect will the President's budget adjustment for fiscal year 1982 have on the Commission's programs and staffing?

Dr. CHAPMAN. I turn that over to Mr. Twiss.

Mr. TWISS. It will affect our staffing, Senator Weicker. The reduction for fiscal year 1982 is $18,000, $12,000 of it will affect staffing. In the latter half of fiscal year 1982, we shall have to let go of one permanent staff member and one part-time person. In terms of which staff member will go, that determination will be made early in fiscal year 1982 based upon what mix of people will give us the maximum return on money invested.

Senator WEICKER. The Marine Mammal Protection Act will be reauthorized this year. Do you believe the act is still viable and do you recommend any changes?

Dr. CHAPMAN. We think the act is still very viable. It has been responsive to the concerns expressed by the U.S. people and the Congress. There are one or two points that we think warrant some further consideration and amendment. One of those, the native exemption provision, is causing problems in Alaska and frustrating efforts to return management to the State. I hope the groups concerned—the State of Alaska, the Commission, and other Federal agencies—will get together to work with the native groups in Alaska to come up with a positive approach that can lead to resolution of that particular problem so that an amendment could go forward that would lead to resolving some of the Alaskan problems. I think that is one area where we hope there will be a constructive dialog that will lead to some proposal to the Congress.

Senator WEICKER. GAO has been conducting an extensive study of the Marine Mammal Commission. Can you tell us the status of that study and what is the view of GAO toward the Commission? Maybe you have no idea. If that is the case, do not hesitate to say so. If you have an idea I would like to hear it.

Dr. CHAPMAN. We understand the report is privileged until it is released by GAO but that GAO was favorable to the Marine Mammal Commission.

Senator WEICKER. Would you make certain as soon as that becomes finalized and official—I would like to have a copy.

What is the present estimate of bowhead whale population in Alaskan waters and will the present quota of bowhead whales allowed the indigenous people of Alaska harm the chances of the species to survive?

Dr. CHAPMAN. The best population estimate is between 2,200 and 2,300. One concern is the small number of calves that have been observed. Although this may result from difficulties in counting calves, it may also be a real problem reflecting the rather large number of whales killed in the 1970's. It appears that the population is declining as a result of those killed under all but the most optimistic and unrealistic assumptions, and the decline may well continue for some time into the future, whether or not there are kills. Therefore, any kills would increase the problem by accentuating the near-term decline. Therefore, the Commission and the U.S. Government's position has been to try to minimize the harvest for the good of the whales and the Eskimos who depend on them, to find alternative ways to meet subsistence needs of the natives of the North Slope area, and to work domestically and internationally with the International Whaling Commission to resolve the problem.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. Dr. Chapman and your colleagues, I thank you very much. I look forward to seeing the report and look forward to working with you in the future.

I have some questions that you can answer for the record.

[The following questions were not asked at the hearing but were submitted to the Commission for response subsequent to the hearing:]

Additional Committee Questions

Question: Would you please provide a brief update on actions being taken to save the West Indian manatee and the Hawaiian monk seal from extinction?

Answer: The West Indian manatee and the Hawaiian monk seal are among the most endangered marine mammals in the world.

After years of inadequate effort to protect and encourage the recovery of the West Indian manatee, considerable progress was made during the past year to develop intensified cooperative research and management programs. These are fully discussed in the Commission's Annual Report for Calendar Year 1980 (Attachment A). Thanks in no small measure to its special $100,000 appropriation for manatees, the Commission was the driving force in developing these cooperative efforts involving State, Federal, and private agencies and organizations.

Although progress has been made, the urgency for further strengthening manatee recovery efforts has been underscored by recent mortality data for this past winter. From 1 November to 31 March, the "winter season", observed manatee mortality for the last three seasons has been: 1978-79, 28; 1979-80, 29; and 1980-81, 69. The great increase this last season has been the result of an exceedingly cold winter.

With respect to the Hawaiian monk seal, the attached excerpts (Attachment B) from the Commission's Annual Report for Calendar Year 1980 should prove informative, particularly with respect to Commission actions taken to invest its special $100,000 appropriation for research on the Hawaiian monk seal. Equally valuable is the summary report forwarded by the Commission's Committee of Scientific Advisors on Marine Mammals (Attachment C).

On 6 March 1981, the Commission wrote (Attachment D) to the National Marine Fisheries Service and requested information on:

- the anticipated number, dates, and location of recovery team meetings to be held in 1981;
- the Service's plans and anticipated schedule for reviewing and completing the draft monk seal recovery plan by the June 1981 target date;
- how much the Service has budgeted for monk seal-related research and management activities in 1981;
- what monk seal-related research the Service plans to conduct or support in FY 1981;
- when the Service plans to make a decision concerning critical habitat determination;
- when the "die-off" contingency plan is expected to be completed and what steps the Service has taken or plans to take to detect and respond in the event of another die-off such as occurred on Laysan Island in 1978;
- when we can expect to receive the reports from the 1980 studies on Laysan and Lisianski Islands.

The Commission received responses from the Service on 23 and 31 March 1981 (Attachment E).

Question: Do you feel the Commission has effectively worked with States to conduct its programs, as, for example, with the manatee in Florida?

Answer: Yes. The Commission recognizes that State and local governments, as well as private groups and individuals, have important interests and abilities bearing on marine mammals. Furthermore, State agencies have vital responsibilities for coastal development and other activities which may directly or indirectly affect certain marine mammal populations. Accordingly, the Commission has sought to support and encourage cooperative Federal and State involvement in marine mammal issues whenever possible. Recent examples of the Commission's commitment to involve state representatives include actions taken with respect to manatees in Florida, sea otters in California, marine mammals in Alaska, and marine mammals off the coasts of Washington and Oregon.

As indicated in Attachment A, the Commission's efforts to encourage and support the involvement of the State of Florida in manatee research and management have contributed to the improved effectiveness of manatee law enforcement and public education programs which, in turn, have greatly strengthened the overall manatee program.

Similarly, the Commission has involved representatives from both the State of California and the Fish and Wildlife Service as members of the sea otter steering groups which it first convened in December 1979 to discuss the variety of issues related to the management of sea otters in California. As discussed in Attachment F (excerpts on sea otters from the Commission's Annual Report for Calendar Year 1980), this group has provided the Fish and Wildlife Service with guidance relative to needed research and management priorities and the development of the Technical Draft of the Southern Sea Otter Recovery Plan.

Relative to Alaska, Commission representatives have met with State and Native representatives in Alaska on two occasions in the past six months in an effort to initiate discussions which could lead to addressing a range of problems relating to a number of species of marine mammals in Alaska. These are discussed in the Commission's Annual Report for Calendar Year 1980, and that portion is included as Attachment G.

With respect to the States of Washington and Oregon, the Commission was instrumental in supporting initial reviews of the problem and then bringing together the States to design and undertake badly needed research on marine mammal/fishery interactions.

Question: What potential effects will increased offshore oil production have on marine mammal populations such as the California sea otter?

Answer: Potential effects of offshore oil and gas production can be both direct and indirect. The Commission supported and first published a paper by Joseph R. Geraci and David St. Aubin entitled, "Offshore Petroleum Resource Development and Marine Mammals: A Review and Research Recommendations", and a copy of the paper, as it eventually appeared in Marine Fisheries Review, is Attachment H. It provides a good discussion of the potential impacts of offshore oil production on marine mammals. The authors note that direct or first-order effects result from such things as: death from being struck by boats and barges associated with

OCS activities; death or decreased productivity from ingesting, inhaling, or otherwise coming in contact with oil or other toxic substances; destruction of essential habitat as a result of on-shore or off-shore construction; and abandonment or avoidance of essential habitat due to disturbance or harassment, noise from vessels, aircraft, and/or drilling rigs, etc. Indirect or second-order effects result from direct or first-order effects which cause changes or reductions in the distribution, size, or productivity of prey populations lower in the food chains.

With respect to the California sea otter, a copy of the U.S. Fish and Wildlife Service's biological opinion regarding OCS leasing and exploration offshore of central and northern California is attached (Attachment I). Starting on page 5 of the Opinion is a description of the sea otter population, sea otter biology, and an assessment of the potential impacts of offshore oil development. The Opinion focuses principally on the direct effects on sea otters (loss of thermal insulation from oiled fur, and ingestion as a result of grooming) and indirect effects from eating contaminated prey. The Service also analyzes the risk of oil spills and related subsequent courses as described by the U.S. Geological Survey.

With respect to many marine mammal species, habitat requirements and habitat use patterns are generally not well documented and available information is insufficient to identify sites essential to their survival. Likewise, available information on the possible effects of such things as noise and oil is also insufficient to accurately predict the effects on species and habitats of activities and events associated with offshore development, and the Bureau of Land Management is supporting a number of studies to better describe possible effects. In addition, the Bureau, recognizing the inadequacy of available demographic information, is supporting baseline surveys to better identify and characterize marine mammal species/populations and essential habitats that might be affected by offshore oil and gas development.

The noise and oil effects studies as well as the baseline surveys in areas off California, Alaska, the East Coast, and the Gulf Coast could eliminate many uncertainties concerning the possible effects of offshore development on marine mammals and marine mammal habitats. Furthermore, the baseline studies should provide a basis for monitoring as well as predicting possible effects.

ATTACHMENT A

Excerpt from the Commission's Annual Report
for Calendar Year 1980

CHAPTER III

ENDANGERED, THREATENED, AND DEPLETED SPECIES

The Commission reviews the status of marine mammal populations and makes recommendations for appropriate actions and designations under the Marine Mammal Protection Act and the Endangered Species Act.

In 1980, the Commission devoted particular attention to the West Indian manatee, Hawaiian monk seal, California sea otter, the bowhead whale, the gray whale, and the humpback whale.

West Indian Manatee (Trichechus manatus)

Along with the Hawaiian monk seal, the right whale, and the bowhead whale, the West Indian manatee is among the most endangered marine mammals inhabiting coastal waters of the United States. The population in Florida is thought to be about 1,000 and may be declining. Observed mortality was 99 animals in 1977, 79 animals in 1978, 73 animals in 1979, and 63 animals in 1980. Observed mortality is certainly but a portion of the total actual mortality, and the apparent decline in mortality may in fact result as much from there now being fewer manatees to kill as from improved protective and enforcement measures. There is little question that if the population numbers only 1,000 animals and the present levels of mortality continue, the Florida manatee population will soon become extinct.

Examples of human-related factors lessening the species' chance for survival in the Southeastern United States include: accidental death or serious injury resulting from collisions with hulls or propellers of boats and barges; entrapment in water level control gates and navigation locks; entanglement in fishing gear; poaching; vandalism; and loss of habitat due to coastal development.

Whereas previous Annual Reports have catalogued a continuing and distressingly low level of activity with respect to efforts to protect and encourage the recovery of this species, the Commission is pleased to report that 1980 appears to have been a year of progress. The Fish and Wildlife Service intensified its efforts significantly, and cooperative work among the State of Florida, the Federal Government, and private organizations increased markedly.

To place 1980 progress in context, certain 1979 activities, fully described in the Commission's previous Annual Report, are briefly summarized. Late in the summer of 1979, the Commission learned that it had been appropriated $100,000 in fiscal year 1980 for work on the manatee. The Commission and its Committee of Scientific Advisors immediately organized and convened a planning group composed of representatives from relevant State agencies in Florida, the Fish and Wildlife Service, the scientific community, and environmental organizations to review needed research and management activities and to provide suggestions on ways in which the appropriation could most profitably be invested.

In addition, an on-site re-evaluation of the situation was done by the Commission's Executive Director who met with research and management officials from a number of Federal

and State agencies as well as representiatives of the scientific community, industry, and environmental groups in Florida in December. As a result of these discussions and reviews, the Commission concluded that: (1) steps to improve the management of activities related to manatee protection were more urgently needed than additional research as a prerequisite to making good use of research already done and to be done; (2) the Fish and Wildlife Service needed an informed, competent, full-time manatee program coordinator/facilitator to work with all interested parties to further protection and recovery efforts; (3) a manatee program coordinator/facilitator was needed to maintain an on-site overview of manatee-related activities and facilitate planning for and implementation of the Service's manatee recovery activities; and (4) the Florida Department of Natural Resources had the interest and competence to undertake critically needed regulatory, enforcement, and educational activities and should be assisted in doing so. Incorporating these thoughts and others, the Commission developed a plan to maximize returns on the $100,000 appropriation. The Commission also sought and received Congressional approval to invest a portion of the money in management-related activities as well as research programs.

To summarize, at the end of 1979, the Commission had identified steps which it believed necessary to address the broad range of manatee problems and had discussed these steps with Federal officials, State officials, and other interested persons. To further ensure that progress be realized, the Commission and its entire Committee of Scientific Advisors on Marine Mammals met in Florida in late February 1980 with representatives of: various Federal agencies including the Fish and Wildlife Service, the Corps of Engineers, and the National Aeronautics and Space Administration; agencies of the State of Florida including the Department of Natural Resources and the Game and Freshwater Fish Commission; Sea World of Florida; the Florida Power and Light Company; various conservation groups including the Florida Audubon Society, Defenders of Wildlife, and the Center for Action on Endangered Species; and other interested persons. The purposes of the meeting were to provide for a thorough review and evaluation of manatee research and management efforts with benefit of broad participation and to seek the participants' views on Commission plans for investing the $100,000 appropriated for work on manatees.

The meeting was held on February 21st and 22nd in Tampa, Florida, a location convenient for representatives of State and Federal agencies and other interested persons. During the full day devoted to review and evaluation of various factors affecting manatees, participants provided useful insights and suggestions to the Commission by concentrating on issues of special concern, deficiencies in on-going and planned programs, and ways to improve Federal/State/private communication and cooperation. Research and management activities either underway or under consideration were discussed as were ideas on steps which could and should be taken immediately to further protect and encourage the recovery of the manatee. Among the many topics discussed were: the Service's research on manatees, problems impairing the effectiveness of State and Federal enforcement efforts, the need for signs to warn boaters of manatees, the need to promptly complete the Manatee Recovery Plan, and Commission plans for investing its $100,000.

Steps were taken to implement one part of the plan by immediately transferring $50,000 to the Fish and Wildlife Service to support the first year's work of a Manatee Recovery Activities Coordinator. The Director of the Service shared the Commission's view that the appointment of such a person was essential, and further agreed to pay for the Coordinator for two additional years. In 1980, the Coordinator became the primary force in developing concrete plans to implement the more general Manatee Recovery Plan, coordinated inter-

agency activities, and assisted the Service's management team pending its appointment of a full-time staff person to manatee work.

Subsequently, the Commission transferred $25,000 to the Service to support a pilot program to develop a site-specific research/management plan for the Crystal River area -- a plan designed to facilitate protection for the manatees and their habitat in that area as well as to serve as a prototype plan for other areas. In this instance, as with the support of the coordinator, the Service agreed to continue to underwrite the work beyond the first year until it is completed. The Commission made a third transfer of $18,000 to the Service for a study to assess and characterize food preferences and feeding areas for manatees in certain areas of Florida as an important step in describing critical habitat. These transfers, as is the case with inter-agency transfers made by the Commission, were accompanied by precise guidance as to ways in which the money was to be spent. Work on both projects is underway, and a progress review will be held in February 1981.

To assist the State of Florida in its efforts to protect and encourage the recovery of the manatee, the Commission contracted with The Florida Department of Natural Resources to: convene a series of enforcement workshops to provide special training for officers of the Florida Marine Patrol (the enforcement arm of the Department of Natural Resources) on relevant laws and enforcement procedures, manatee biology, and general information related to manatee protection; prepare and disseminate special brochures to better inform and educate the public; rewrite the manatee section of the Florida Marine Patrol's field enforcement manual; and constitute and support a State Manatee Advisory Committee for its first year's operation.

With respect to the enforcement workshops, the Florida Marine Patrol held eight regional workshops before the beginning of the 1980-81 winter season. One hundred and sixty-eight Florida Marine Patrol officers, seventy Florida Game and Freshwater Fish Commission officers, two Puerto Rico Department of Natural Resources enforcement officers, and representatives from other governmental agencies, and private groups participated. One index of the success of the workshops may lie in the comparative figures for Florida Marine Patrol manatee-related citations in the 15 November-31 December periods for 1979 and 1980. These were: 1979, 31 arrests and 190 written warnings; 1980, 72 arrests and 850 written warnings. The brochures for the public are to be finished in early 1981 as is the revised field enforcement manual. Selections were made in 1980 for the Advisory Committee and formal invitations are to be extended in early 1981.

During the Commission's February meeting, the Director of the Florida Marine Patrol noted that while the Florida Department of Natural Resources had posted more than 300 signs to warn boaters to reduce speeds because of the possible presence of manatees, many signs remained to be posted. Preliminary discussions took place with the U.S. Army Corps of Engineers' representative as to whether the Corps might assist in posting the remaining signs, and the Commission followed up on these discussions later that same month in Washington. Those and subsequent meetings involving the staffs of the Florida Department of Natural Resources, the Corps of Engineers, and the Commission concluded favorably when the Corps agreed in October to provide the necessary funds and logistical support to post 91 additional signs. The negotiation of contracts for the work is to be completed in early 1981 and the signs are to be in place by early summer.

The Fish and Wildlife Service had, by mid-1979, completed

a draft Manatee Recovery Plan on which the Commission commented in detail on 25 July 1979. The Commission, emphasizing the need for action-oriented planning, recommended that the Plan's content, format, and process for updating be revised to precisely identify specific actions, schedules, and resources that the Service would commit to protect and encourage the species' recovery. In December, the Commission further commented on the next iteration noting that, although the Plan was substantially improved, it still did not contain the specific implementation plans earlier recommended by the Commission. During its February meeting, the Commission learned that the most recently reviewed draft was being considered for formal approval by the Director of the Fish and Wildlife Service. Although the Plan did not yet include the detailed, action-oriented implementation appendices recommended by the Commission, the Service agreed that such plans were needed, would be developed, and would be added to the approved Plan upon completion. On 15 April 1980, the Director of the Service, in approving the West Indian Manatee Recovery Plan, noted that, with the assistance of the Manatee Recovery Activities Coordinator, it would be updated and revised as soon as possible to include specific implementation plan appendices.

In early summer, the Commission suggested to the Fish and Wildlife Service that it convene a meeting of key personnel to review general progress and the activities of the Manatee Recovery Activities Coordinator, particularly with reference to the Recovery Plan. The Service responded promptly, and held the meeting on 23 June. It became clear that the Manatee Recovery Activities Coordinator had, of necessity, worked on many problems more appropriately handled by the Service's management staff, and, as a result, had not had the necessary time to complete the Recovery Plan appendices. To remedy this, the Service assigned full-time responsibility for manatee management activities to a staff member in Florida, thereby allowing the Manatee Recovery Activities Coordinator to concentrate on longer-term problems like the Recovery Plan. As a result, appendices were prepared and reviewed by representatives of the Service, the Commission, the State of Florida, the Puerto Rico Department of Natural Resources and others on 20-21 October. By early 1981, the Service expects to have completed final appendices which set forth specific tasks to be conducted, those responsible for doing them, the costs involved, and the time-frame within which each task is to be done.

In 1980, increased levels of cooperation and communication as well as intensified commitments to meet problems became apparent throughout governmental and non-governmental organizations. Improved law enforcement, the creation of specially protected areas, better public information and education programs, strengthened research and study programs, and a generally heightened awareness of the problems and issues are all in evidence.

Excerpt from Chapter II
Support of Research and Management Activities

Because of human-caused mortality, injury, and habitat destruction/degradation, the Florida manatee population, like other populations of West Indian manatees, is in danger of extinction. For these reasons, the Commission, in recent years, has recommended that the U.S. Fish and Wildlife Service take a variety of steps to protect and encourage recovery of the species (see previous Annual Reports).

In FY 1980, the Commission received a $100,000 Congressional appropriation to facilitate the development of an effective research and management program to benefit the West Indian manatee. Following extensive governmental and non-governmental consultations (see the 1979 Annual Report), the Commission decided to use the appropriation to: (1) make an appropriately

qualified individual available to the Fish and Wildlife Service to facilitate problem identification and coordination of research, management, and education activities being undertaken by various Federal, State, and private organizations; (2) support a pilot program to develop site-specific research/management plans for areas of special significance to the manatee; (3) initiate a study to assess and characterize the feeding habits, food preferences, and feeding areas of manatees in Florida; (4) help strengthen manatee enforcement programs in Florida through additional training of law enforcement officers; (5) intensify the Florida Department of Natural Resources' public information and education programs; and (6) facilitate the development of a manatee advisory group for the State of Florida. To meet these objectives, the Commission either transferred funds to the U.S. Fish and Wildlife Service or contracted directly for the described activities.

Problem Identification, Overview, and Coordination of Efforts to Protect the West Indian Manatee and its Habitat (U.S. Fish and Wildlife Service)

Based upon a number of reviews, including on-site evaluations, the Commission concluded, and the Fish and Wildlife Service agreed, that the Service needed a full-time program coordinator to oversee, facilitate, and coordinate the efforts of the various responsible and interested groups (see Chapter III). Therefore, the Commission provided funds and guidance to the Service, which in turn, contracted with the Florida Audubon Society to provide a full-time Manatee Recovery Activities Coordinator. During 1980, the Coordinator met regularly with representatives of the responsible agencies and interested organizations, developed the draft of the detailed plan of action for facilitating the protection and recovery of manatee populations in Florida, and provided assistance to the Service's management team until the Service appointed a full-time staff person with management responsibility. Under the terms of the Interagency Agreement with the Commission, the Service agreed to provide two additional years' support for the Coordinator.

Development of a Research/Management Plan for the Crystal River Manatee Population (U.S. Fish and Wildlife Service)

Available information on the distribution and movements of manatees suggests that there are a number of more or less discrete populations or sub-populations of manatees in Florida. Human-related threats to these populations or sub-populations appear to be area-specific so that protection and recovery of the population as a whole will require development and implementation of a number of area-specific research/management programs. Therefore, the Commission provided funds and guidance to the Fish and Wildlife Service to initiate development of a research/management plan for the manatee population which overwinters in the Crystal River area of Florida. The plan, intended to serve as a model for developing research/management plans for manatee populations in other areas as well as the plan for the Crystal River area proper, is expected in the spring of 1981.

Initiation of a Study to Assess and Characterize the Feeding Habits, Food Preferences, and Feeding Areas of Manatees in the Hobe Sound/Riviera Beach Area of Florida (U.S. Fish and Wildlife Service)

To assure the continued existence and well-being of manatee populations in Florida, breeding areas, feeding areas, and other areas of biological importance must be protected and human-caused mortalities and injuries must be reduced. Unfortunately, habitat requirements and use patterns

of manatees are not well documented, and all areas of special biological importance to manatees have not been identified. Furthermore, standardized methods and procedures for identifying, characterizing, and monitoring important manatee habitats have not yet been developed. This study was designed to develop and evaluate methods and procedures for identifying, characterizing, and monitoring essential manatee habitats. The Hobe Sound/Riviera Beach area includes extensive grassbeds which are used by manatees that congegrate in the warm water effluent from the Riviera Beach Power Plant during winter cold periods, and available information suggests that dumping, dredging, and other human activities may be affecting the grassbeds. A need exists, therefore, to characterize and monitor the grassbeds and to determine their importance relative to the Hobe Sound/Riviera Beach manatee population, as well as to develop methods and procedures for doing so. Work began in October 1980, and the Fish and Wildlife Service intends to continue to support the research until the desired information has been acquired.

Law Enforcement Workshops
(Florida Department of Natural Resources)

Manatees are afforded protection under a variety of State and Federal laws, and all officers in the Florida Marine Patrol are deputized to take enforcement actions pursuant to Federal statutes such as the Marine Mammal Protection Act and the Endangered Species Act as well as the State of Florida's Manatee Sanctuary Act. The Commission, recognizing that fully effective officers must understand applicable law and the possible biological consequences of harassment, poaching, vandalism, and other causes of mortality and injury, contracted with the Department of Natural Resources' Florida Marine Patrol to convene a series of eight regional training workshops, under contract to the Commission, to review: applicable State and Federal laws; types of activities for which warnings or citations can be issued; ways of achieving optimum cooperation and effectiveness among law enforcement agencies; and manatee life history including distribution, abundance, movements, behavior, feeding habits, and habitat use. All of the training sessions, to which the Florida Marine Patrol invited officers from the Game and Freshwater Fish Commission and the Puerto Rico Department of Natural Resources, were held before the beginning of the 1980-81 winter season.

Intensification of Education Programs
(Florida Department of Natural Resources)

The protection and recovery of manatees will depend heavily upon a well-informed public. Having recognized this, the Florida Department of Natural Resources has conducted public education programs for some time. Perceiving a need for the preparation and distribution of information brochures to the public, the Department proposed to the Commission that it consider supporting such an undertaking. The Commission contracted for the preparation and distribution of 50,000 brochures and for the revision of the field enforcement manual for Florida Marine Patrol Officers. Drafts have been completed and the final documents are expected in early 1981.

Constitution of a State Manatee Advisory Group
(Florida Department of Natural Resources)

The State of Florida's Department of Natural Resources sought Commission support to enable it to establish a committee of experts to assist the Director in: evaluating drafts of the manatee recovery plan; coordinating various State and Federal programs related to manatee recovery; developing rules on State aquatic preserves including some of those which may overlap designated areas of critical manatee habitat; identifying land which should be acquired

for management and maintenance of important manatee habitat; making revisions appropriate for inclusion in the annual updating of work plans appended to the manatee recovery plan; and identifying ways to more effectively use all available statutory and programmatic mechanisms to further protect and encourage the recovery of the manatee. A contract was let by the Commission, and committee members were selected in late 1980. They are to be formally invited to serve in early 1981.

ATTACHMENT B

Excerpt from the Commission's Annual Report
for Calendar Year 1980

CHAPTER III

ENDANGERED, THREATENED, AND DEPLETED SPECIES

The Commission reviews the status of marine mammal populations and makes recommendations for appropriate actions and designations under the Marine Mammal Protection Act and the Endangered Species Act.

In 1980, the Commission devoted particular attention to the West Indian manatee, Hawaiian monk seal, California sea otter, the bowhead whale, the gray whale, and the humpback whale.

Hawaiian Monk Seal (Monachus schauinslandi)

The Hawaiian monk seal inhabits a limited area on and around the coral atolls and islets of the Leeward Hawaiian Islands. Surveys conducted since the late 1950's indicate that there has been a substantial decrease in the population. Fewer than 700 seals were counted in 1977, while 1,200 were seen in 1958. Furthermore, in 1978, 50-60 seals died on or near Laysan Island, perhaps as a result of ciguatoxin poisoning. Threats to the species include: disturbance and harassment by persons living on or visiting the islands; commercial fishing in adjacent reef and open ocean areas; disease; natural and man-made toxic substances; and shark predation.

The National Marine Fisheries Service has lead-agency responsibility for protecting the monk seal and its habitat. This responsibility is shared to some extent with the Fish and Wildlife Service as well, since a portion of the species' range occurs in the Hawaiian Islands National Wildlife Refuge.

In recent years, the Commission has recommended a number of actions, including the designation of critical habitat and the constitution of a Monk Seal Recovery Team, to encourage the development of an effective research and management program which would facilitate protection and encourage the recovery of the species (see previous Annual Reports). In Appropriations Hearings on the FY 1980 budget, Congress took note of the slow response to Commission recommendations and, late in the summer of 1979, appropriated $100,000 to the Commission to undertake necessary work on monk seals. Immediately thereafter, the Commission organized and convened a meeting of monk seal experts, including scientists from the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, the State of Hawaii, and the academic community, to review the draft five-year research plan prepared at an earlier Commission-sponsored meeting and provide suggestions on ways in which the maximum return on the appropriated money could be realized. The experts' report was used to develop a preliminary plan for investing

the $100,000, and, on 27 December 1979, letters enclosing the plan were sent to the National Marine Fisheries Service and the U.S. Fish and Wildlife Service for review and comment.

The Commission's plan identified ten tasks of primary importance for: determining the cause or causes of the monk seal decline; improving assessments of the status of monk seal populations and habitats; and facilitating the development, support, and implementation of an effective monk seal recovery plan. The letter to the National Marine Fisheries Service noted that the Commission assumed that the Service would continue certain studies and might be able to provide personnel and/or ship support to assist in the conduct of certain studies identified in the plan. The Commission also asked if the Service would undertake certain of the identified tasks with Commission support, and that, if it chose to do so, it submit a research proposal or proposals to the Commission for consideration. The Commission also recommended in its letter that the Service appoint and convene the Monk Seal Recovery Team no later than the first week in February 1980, and further asked that the information requested in the letter be provided in time to be considered at the meeting of the Commission and its Committee of Scientific Advisors on 21-22 February. The Commission's 27 December 1979 letter to the Fish and Wildlife Service asked that the Service: review the draft plan; indicate how it might be improved and/or coordinated with research programs being carried out in the Hawaiian Islands National Wildlife Refuge; provide a list and description of research projects to be carried out at the Refuge during the coming year, including an assessment of the possible effects of those studies on monk seals; and advise the Commission as to its short- and long-range plans for the abandoned Coast Guard station on Tern Island, French Frigate Shoals.

On 21-22 February 1980, the Commission and its Committee of Scientific Advisors met with representatives of the National Marine Fisheries Service who advised the Commission that: the Service generally concurred with the tasks, priorities, and funding levels set forth in the Commission's draft research and studies plan for monk seals; the Honolulu Laboratory of the Southwest Fisheries Center was willing to undertake certain studies if funds were provided by the Commission; decisions on other studies should be postponed until after the first meeting of the Monk Seal Recovery Team; the Service was in the process of hiring a recovery team leader and appointing a recovery team; and a completion date for the monk seal recovery plan could not be projected. The Commission also was advised that the Draft Environmental Impact Statement concerning designation of critical habitat for the Hawaiian monk seal was almost finished and would be sent to the Commission for review and comment. Representatives of the U.S. Fish and Wildlife Service advised the Commission that certain proposals for research in the Hawaiian Islands National Wildlife Refuge were under review, pursuant to Section 7 of the Endangered Species Act, to determine whether they might have an adverse effect on monk seals, and that a study was being conducted to identify and evaluate alternative uses for the abandoned Coast Guard station on Tern Island.

After the 21-22 February meeting, the Commission took steps to implement the plan. Among other things, it drafted a scope of work for Laysan Island monk seal studies, and, by letter of 3 March 1980, forwarded it, as well as a proposed inter-agency agreement to transfer $50,000 to the Service for support of the study. Also, since all the information requested in its 27 December letters had not been provided by the two Services prior to or during the February meeting, the Commission wrote them again on 7 March. In its letter to the National Marine Fisheries Service, the Commission noted that it remained uncertain as to: the details of certain studies being conducted or planned by the Service; how much financial assistance would be needed from the Commission in order to undertake certain activities; the

Service's views as to other field research which could and should be conducted in 1980 and how it might contribute to those efforts; how much the Service had budgeted for monk seal-related activities in fiscal year 1981; who had been invited and agreed to become members of the Monk Seal Recovery Team; when the recovery team was expected to begin meeting; and when the recovery plan was expected to be completed, reviewed, adopted, and implemented by the Service.

The Commission's 7 March letter to the U.S. Fish and Wildlife Service requested that, before taking any action, the Service give the Commission and the National Marine Fisheries Service an opportunity to review and comment on the report concerning options for the future use of the abandoned Coast Guard Station on Tern Island. The letter also asked the Service to advise the Commission as to: the nature and extent of monk seal research being conducted or planned by the Service and how it might be coordinated with other research being conducted or planned by the Commission and/or the National Marine Fisheries Service; the nature and extent of other research on the Hawaiian Islands National Wildlife Refuge which might affect monk seals or other endangered species; and the status of any on-going or planned Endangered Species Act consultations with the National Marine Fisheries Service.

On 12 March 1980, the Commission received the National Marine Fisheries Service's 7 March response to its letter of 27 December 1979. The response provided useful comments on the Commission's draft research and studies plan, as well as other requested information, and noted, among other things, that: the leader of the Monk Seal Recovery Team had been selected; the first meeting of the recovery team would be held sometime during the period from mid- to late-March 1980; and prior to the meeting, a workshop would be held to facilitate development of a plan for responding in the event of another monk seal "die-off" such as occurred on Laysan Island in 1978. On 13 March, the Commission and the National Marine Fisheries Service signed the inter-agency agreement which the Commission had forwarded to the Service on 3 March, thereby implementing the transfer of funds necessary to continue the Laysan Island monk seal study (see Chapter II).

On 18 March, Commission and National Marine Fisheries Service representatives met to review efforts to implement research and management actions.*/ During the meeting, Commission representatives expressed continuing uncertainty about the precise nature of the ciguatoxin and other monk seal studies either underway or planned by the Service, the resources allocated by the Service for monk seal-related activities in FY 80, and the possible need for Commission support of either the workshop to develop a "die-off" response plan or other needed studies. The Service noted that it had reprogrammed FY 80 funds to cover certain expenses including recovery team support and vessel charters for field scientists working on Laysan and other islands. It was also agreed that the Service would provide additional information about on-going and planned research and advise the Commission as to whether its support would be needed for the workshop to develop a "die-off" response plan.

On 27 March, the Service wrote the Commission that such support was needed, and on 28 March, the Commission developed and forwarded a scope of work and inter-agency agreement transferring $3,000 to the Service for the workshop. At about the same time, the Commission also contracted for the radio transmitters for the pilot radio-tracking/dive-profile study, and thereby helped get this important work started (see Chapter II).

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*/ A Fish and Wildlife Service representative was invited to attend this meeting, but was unable to do so.

The Hawaiian Monk Seal Recovery Team used its first meeting on 26-27 April 1980 for organizational purposes and to review the Commission's research and studies plan. On 16 May, the results of the meeting were sent to the Commission and subsequently discussed during a 23 May meeting between Commission and Service representatives. Among other things, the Commission was advised that: the Recovery Team expected to complete a draft recovery plan by June 1981; the Recovery Team, with support from the National Marine Fisheries Service, would undertake several tasks identified in the Commission's research and studies plan; and the Recovery Team was of the opinion that analysis of existing data from the in-depth study of monk seals on Laysan Island should be afforded higher priority than certain other tasks identified in the Commission's research and studies plan.

On 10 June 1980, the Fish and Wildlife Service answered the Commission's 27 December letter. The Service concurred with the plan's objectives, recommended that the Commission consider allocating funds to support additional analysis of data from the Laysan Island study, provided a list of on-going and planned studies in the Hawaiian Islands National Wildlife Refuge, described efforts to coordinate studies and consult with the National Marine Fisheries Service to ensure that the studies would not adversely affect monk seals or other endangered species, and reviewed the situation with respect to the abandoned Coast Guard station on Tern Island.

On 19 June 1980, Commission and National Marine Fisheries representatives met to review progress and identify additional actions that might be taken in 1980 to speed developing and implementing an effective monk seal recovery plan. During the meeting, it was noted that: the Service was proceeding with efforts to assess and designate critical habitats for monk seals in light of information developed during the recently completed "radio-tracking/dive-profile" study of monk seals on Lisianski Island (see Chapter II); the Service also was developing an education program and information brochures on monk seals; and the Service believed that every effort should be made to promptly complete the analysis and reporting of data from the Laysan Island study. The Commission agreed to contract for a study to compile and summarize available information on shark fisheries and control programs in Hawaii and elsewhere and for an analysis of possible direct and indirect effects of on-going and planned fishery development in the Northwest Hawaiian Islands. The Commission also agreed to consider transferring money to the National Marine Fisheries Service to complete the analysis of Laysan Island data.

Following further discussions with the Recovery Team Leader, the Commission contracted for the studies on shark control programs and fishery development on 8 and 12 August, respectively (see Chapter II). On 16 September, the Commission concluded an agreement to transfer $21,000 to the Service for the analysis of data from the Laysan Island study.

In addition to taking actions to use the special $100,000 appropriation to the maximum possible advantage, the Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, also reviewed and commented on: (1) the Draft Environmental Impact Statement (DEIS) for the Proposed Designation of Critical Habitat for the Hawaiian Monk Seal (Monachus schauinslandi) in the Northwestern Hawaiian Islands; and (2) a proposal submitted to the Intergovernmental Maritime Consultative Organization (IMCO) to designate areas around the Northwestern Hawaiian Islands as "Areas To Be Avoided" by large ocean-going vessels.

The DEIS on critical habitat designation was prepared by the National Marine Fisheries Service and forwarded to the Commission for review in late February 1980. On 14 May, the Commission commented. It noted, among other things, that: of the three options presented, the "20 fathom"

option (i.e., designating critical habitat as all beach areas and surrounding waters out to a depth of 20 fathoms) was the best supported and most desirable based upon the available information concerning habitat requirements and the apparently declining status of the monk seal population; and the DEIS discussion should be expanded to include a fourth option which would combine the 20-fathom and 3-mile options.

With respect to the proposal to designate the Northwestern Hawaiian Islands as an "Area To Be Avoided", the Commission reviewed the U.S. Coast Guard's proposal to IMCO's Maritime Safety Committee, and, in light of the potential effects on monk seals of pollution from stranded vessels, expressed its full support for the proposal by letter of 3 November. The Commission also described the on-going Service and Recovery Team efforts to prepare a monk seal recovery plan, and suggested that the Coast Guard consult with the Service as to how it might help facilitate adoption of the proposal. The proposal was considered at the December meeting of IMCO's Maritime Safety Committee and a final decision on the designation is expected from IMCO in 1981.

In late November, the Western Pacific Fishery Management Council solicited Commission comments on the "Combined Fishery Management Plan, Environmental Impact Statement, and Regulatory Analysis for the Spiny Lobster Fisheries of the Western Pacific Region", a plan for the spiny lobster fishery in the Northwestern Hawaiian Islands. The plan indicates that spiny lobsters currently are being harvested in substantial numbers in the Northwestern Hawaiian Islands and that the fishery could have direct and indirect effects on the monk seal. In early 1981, the Commission will submit its detailed comments and recommendations to the Council.

In summary, by the end of 1980, the National Marine Fisheries Service had constituted a Monk Seal Recovery Team which had met several times and had started to develop a Recovery Plan. The Commission had invested its special appropriation to hasten the development and implementation of effective monk seal research and management programs and had reviewed and commented on various proposed actions affecting monk seals. Unfortunately, the Service had made no decision regarding critical habitat designation by the end of the year, and it was also not clear that the Service had programmed sufficient funds to effectively follow up on work begun in 1980.

Excerpt from Chapter II

Support of Research and Management Activities

The Hawaiian monk seal is in grave danger of extinction and, in recent years, the Commission has recommended that the National Marine Fisheries Service and the U.S. Fish and Wildlife Service undertake certain actions to better assess the status and encourage recovery of the species (see previous Annual Reports for details). By late 1979, neither agency had developed an effective research and management program, and Congress appropriated $100,000 to the Commission for FY 1980 to facilitate the development of such a program.

Following consultations with appropriate representatives of the Hawaii Department of Fish and Game, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and the academic community (see the Commission's 1979 Annual Report), the Commission determined that the special $100,000 appropriation should be used to: (1) synthesize and evaluate survey and resighting data from monk seal studies carried out on Laysan Island in 1977, 1978, and 1979; (2) continue and, if possible, expand the Laysan Island study; (3) initiate a pilot study to evaluate the possible effects and effectiveness of using radio tags and depth-of-dive recorders to determine the movements and habitat-use patterns

of monk seals; (4) facilitate the development of a contingency plan for responding to monk seal die-offs such as occurred on Laysan Island in 1978; (5) compile and evaluate available information concerning the feasibility, possible utility, and effects of a shark control program at Kure Atoll or elsewhere in the Leeward Hawaiian Islands; (6) identify and evaluate the possible adverse effects of on-going and planned fishery development on monk seals and their habitat; and (7) complete the analysis of available data concerning the biology, ecology, behavior, and population dynamics of monk seals on Laysan Island. Pursuant to these determinations, the Commission transferred funds to the National Marine Fisheries Service and/or contracted for the studies which are described below.

Synthesis and Evaluation of Survey and Resighting Data from Monk Seal Studies on Laysan Island, 1977-79
(B. and P. Johnson)

In 1977, 1978, and 1979, the investigators surveyed and observed monk seals on Laysan Island. Preliminary evaluation of the data collected by the investigators suggested that it would be highly desirable to continue and perhaps expand the studies to include regular surveys and behavior observations on monk seals on other islands. Much of the data had not been fully evaluated, however, and it was not possible to determine precisely what, when, where, or how the follow-up studies should be conducted. Therefore, the Commission provided funds and guidance, and made arrangements with the U.S. Fish and Wildlife Service to provide a biometrician to help the investigators conduct a more detailed evaluation of selected survey and resighting data. The results of the analysis were used to evaluate alternative methods for estimating population size and to help plan the field study described below.

Continuation of Monk Seal Studies on Laysan Island
(National Marine Fisheries Service)

Since 1977, the Marine Mammal Commission, the National Marine Fisheries, and the U.S. Fish and Wildlife Service have jointly sponsored an in-depth study of the monk seal population on Laysan Island (see previous Annual Reports). The study has provided essential data on the demography, activity patterns, and behavior of monk seals and, from the results of the data analyses described above, the Commission determined that it should be continued for at least another year. The National Marine Fisheries Service concurred with the Commission's determination and funds were transferred to the Service so that the study could be continued. A comprehensive analysis of the data from the study will be undertaken in 1981 (see below) and the results of the analysis will be used by the Monk Seal Recovery Team, the Commission, and the National Marine Fisheries Service to assist in identifying actions needed to encourage recovery and monitor the status of the Hawaiian monk seal population.

Analysis of Data Concerning the Biology, Ecology, Behavior and Population Dynamics of Monk Seals on Laysan Island
(National Marine Fisheries Service)

As noted above, an in-depth study of the monk seals on Laysan Island has been underway since 1977. The study has produced more data than originally anticipated and, as a result, all of the data have not been analyzed and reported. The Monk Seal Recovery Team reviewed the study results during its first meeting in April 1980 and, following the meeting, advised the National Marine Fisheries Service and the Commission that a more thorough analysis of the data would facilitate the development of the Monk Seal Recovery Plan. The Commission concurred with this determination and, in addition to providing the necessary funds, advised the

Service as to what and how data should be analyzed and reported. The analysis is on-going and, among other things, is expected to provide more reliable information on pup and adult survival, growth rates, age at first reproduction, pupping intervals, age-specific reproductive rates, reproductive behavior, daily and seasonal haul-out patterns, feeding habits and food requirements of monk seals. This information will be used by the Monk Seal Recovery Team to provide a better assessment of the status of the monk seal population and actions needed to encourage its recovery.

Radio-Tagging Monk Seals
(Cedar Creek Electronics Laboratory, University of Minnesota)

Better information on the daily and seasonal activity patterns and the habitat-use patterns of monk seals is needed to improve population estimates, design more effective population surveys, and better delineate marine areas that are or may be critical to the survival or recovery of the Hawaiian monk seal. Radio transmitters and depth-of-dive recorders had been used on other pinnipeds to collect this kind of information and, in 1978, a group of experts convened by the Commission recommended that a pilot study be conducted to evaluate the potential utility and harmful effects of using such technology on monk seals. Subsequently, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service planned a pilot "radio-tracking/dive profile" study. However, they lacked funds to purchase all of the necessary radio tags as well as the requisite technical expertise, and the Commission therefore contracted with the supplier to provide additional tags and technical assistance. The study, completed in 1980, demonstrated that radio tags and depth-of-dive recorders can be used to assess the activity patterns and habitat-use patterns of monk seals and that, if used as in this study, the tags and recorders will not jeopardize the well-being of the monk seals to which they are attached. The study results are being used by the Hawaiian Monk Seal Recovery Team to determine the potential utility of a major tagging effort; the report, being prepared by the National Marine Fisheries Service, is expected in early 1981.

Development of a Monk Seal "Die-Off" Response Plan
(National Marine Fisheries Service)

In 1978, 50-60 monk seals died on Laysan Island, possibly as a result of ciguatoxin poisoning. The National Marine Fisheries Service investigated the "die-off" but the investigation was hampered by difficulties in obtaining the necessary permits, and in assembling and transporting an appropriate research team and equipment to the scene of the die-off. Therefore, a contingency plan is needed to be better prepared to act promptly and efficiently in the event of another die-off. To facilitate the development of a contingency plan, the Commission transferred funds to the Service for a workshop to: identify and provide the rationale for field and/or laboratory studies needed to determine the cause or causes and as possible to mitigate the effects of other monk seal "die-offs" should they occur; identify the permits, equipment, supplies, personnel, facilities, and logistic support that would be required to conduct the studies; and estimate the costs of conducting such studies. The workshop, organized by the leader of the Hawaiian Monk Seal Recovery Team, was held at the Service's Southwest Fisheries Center in April 1980. A workshop report has been drafted and is being used by the Service, in consultation with the Commission, to develop a die-off response plan.

Review of Available Information Concerning the Possible Effects of a Shark Control Program on Shark Populations and Other Components of Marine Communities in the Vicinity of the Northwest Hawaiian Islands
(Ocean Research Consulting and Analysis Limited, Honolulu, Hawaii)

It has been hypothesized that the observed decline of monk seals on Kure Atoll may be caused by sharks preying upon newly weaned pups and that a shark control program in the vicinity of Kure Island and perhaps elsewhere in the Northwest Hawaiian Islands might facilitate the recovery of the Hawaiian monk seal. However, it is not known whether predation is a cause of significant monk seal mortality or how a shark control program might affect the shark populations or other components of the marine communities of which they are a part. This study was undertaken to compile and summarize available information on: the structure and dynamics of shark populations and the marine communities of which they are a part; and the effects and effectiveness of shark control programs and shark fisheries in Australia, South Africa, Hawaii, and elsewhere. A preliminary report was provided to the Hawaiian Monk Seal Recovery Team in September 1980 and is being used to help assess the possible costs and benefits of reducing shark populations to facilitate recovery of the Hawaiian monk seal. The final report is expected to be completed in early 1981.

Identification and Evaluation of On-Going and Planned Fisheries in the Northwest Hawaiian Islands
(SEACO, Honolulu, Hawaii)

Monk seals may be disturbed, harassed, or taken incidentally by sport and commercial fishermen and overharvesting of certain fish and shellfish populations may reduce the habitat's carrying capacity for monk seals. This study was undertaken to provide information that could be used to determine whether and how on-going and planned fisheries may directly or indirectly affect monk seals. A preliminary report was provided to the Hawaiian Monk Seal Recovery Team in September 1980 and is being used to help determine whether and what actions may be needed to assure that fishery development does not have a significant adverse effect on monk seals and their habitat. The final report is expected in early 1981.

ATTACHMENT C

MARINE MAMMAL COMMISSION
1625 EYE STREET, N. W.
WASHINGTON, DC 20006

3 April 1981

M E M O R A N D U M

TO: The Commissioners

FROM: L. Lee Eberhardt
Committee of Scientific Advisors
on Marine Mammals

SUBJECT: Hawaiian Monk Seal

Pursuant to your request for a review of the Hawaiian monk seal, I submit the following.

* * *

Hawaiian monk seal (Monachus schauinslandi)

The Hawaiian monk seal exists only in the Leeward Islands (also known as the Northwestern Hawaiian Islands), extending over 1,000 nautical miles to the northwest of the main Hawaiian Islands (Kenyon 1972). Repenning and Ray (1977) considered that it "appears to be the modern representative of the most ancient of living phocid lineages, and as such might be characterized not altogether improperly as a living fossil". Two other species are assigned to the genus. The Caribbean monk seal (M. tropicalis) appears now to be extinct (Kenyon 1977), while the Mediterranean monk seal (M. monachus) is reported to number between 500 and 1,000 and to be "declining at an alarming rate" (Anderson 1978, Sergeant et al., 1979). There is thus reason to believe that the genus has a dubious future with its duration very much dependent on conservation measures that in turn depend on scanty knowledge of the dynamics of small populations.

Kenyon and Rice (1959) reported that sealing expeditions in the mid-nineteenth century brought the Hawaiian monk seal "to near extinction" followed by further depletion by quano diggers, bird hunters, and whalers in the late 1800's and early 1900's. Recovery in subsequent years was such that Rice (1960) was led to suggest that "These data, together with the historical evidence, indicate that the population is increasing and is not at present limited by density-dependent factors." Subsequent events (Kenyon 1972) led to designation of the Hawaiian monk seal as an endangered species in 1976. A recovery team has been appointed, but as of mid 1981 had not completed a recovery plan.

The first extensive attempts to assess the population were conducted in 1957-58, resulting in an estimate of 1,350 individuals in the entire Hawaiian monk seal population (Rice 1960:377). As discussed below, this figure undoubtedly substantially underestimates the size of the population at that time. Recent counts (Kenyon 1976, Johnson and DeLong ms. in preparation) indicate that the population may subsequently have been reduced to half the earlier level. These data depend on counts of seals hauled out on beaches, and are based on aerial counts, observation from boats, and from walking the beaches. Under-estimation is thus to be expected, and

determination of the fraction of the population actually on shore when beach counts are made will undoubtedly increase the population estimates derived from simple tallies alone. Improved estimates for one island (Laysan) were made subsequently by B. and P. Johnson, and will be discussed below.

The future welfare of the population obviously depends on restoration of a favorable balance between recruitment and mortality. Censuses may serve to monitor overall trends, but are unlikely to provide much information on proximate causes of observed changes. Essential features for these purposes are age-specific birth and death rates. Problems in this area will be discussed below, but an important complication needs mention here. Trends in the major segments of the population do not appear consistent over the 20 years for which some data are available. The westernmost sites (Kure, Midway, and Pearl and Hermes Reef) show a dramatic decline, while recent counts on the easternmost major site (French Frigate Shoals) are appreciably higher in 1969-1977 as contrasted to 1957-1967.

Figure 1 shows population trends over 21 years for three subdivisions of the Leeward chain. The data are those given by Kenyon (1978), except that Kure populations have been interpolated between 1958 and 1968 by assuming that an exponential decline occurred in the period at a rate inferred from the change from the 1958 count to the 1968 count. The Midway population was assumed to decline to 2 animals in 1964. Some of the fluctuations are very possibly associated with differences in counting technique and opportunity. That is, some are shore counts, others are made from aircraft, and still others from boats. Further, in some instances the highest of a number of successive counts is used, while in other cases only one count is available for a year. Nonetheless, it seems reasonable to suppose that the data provide a reasonably good index to population trends, since they were collected by a relatively few experienced observers with good knowledge of the species, its habitat, and behavior.

For a long-lived species with low reproductive rates, sharp changes in numbers inevitably lead to shifts in age structure. These changes will influence age composition and trends for decades into the future. There is thus good reason to suppose that future analyses will have to be focused on sub-populations, and cannot accurately deal with the population as a whole (assuming, as seems most likely, that all elements of the population do not move freely about the entire Leeward chain). There is consequently a need to deal with population units numbering in the hundreds. Sample sizes, and observational methods thus become of key importance, and the risks of misinterpreting gross measures (e.g., pup/adult ratios) are substantial. There are also various features of the data that are as yet not understood in demographic terms, such as the relatively high numbers of adult males observed in some of the sub-populations.

Rates of interchange in the population spread over 1,000 nautical miles, are not known. Schreiber and Kridler (1969) reported a seal tagged on Laysan Island as being recovered on Johnston atoll (1013 km distant). Kenyon and Rice (1959:218) cited a number of reports of monk seals sighted in the main Hawaiian Islands. Kenyon and Rice (1959:219) also adduced observations of individuals with a heavy growth of green algae in the hair and the repopulation of Laysan Island after local extermination as evidence of distant movements of individuals. Tagging in 1957 (Rice 1960) yielded a low rate of inter-atoll movements. Subsequent returns from this

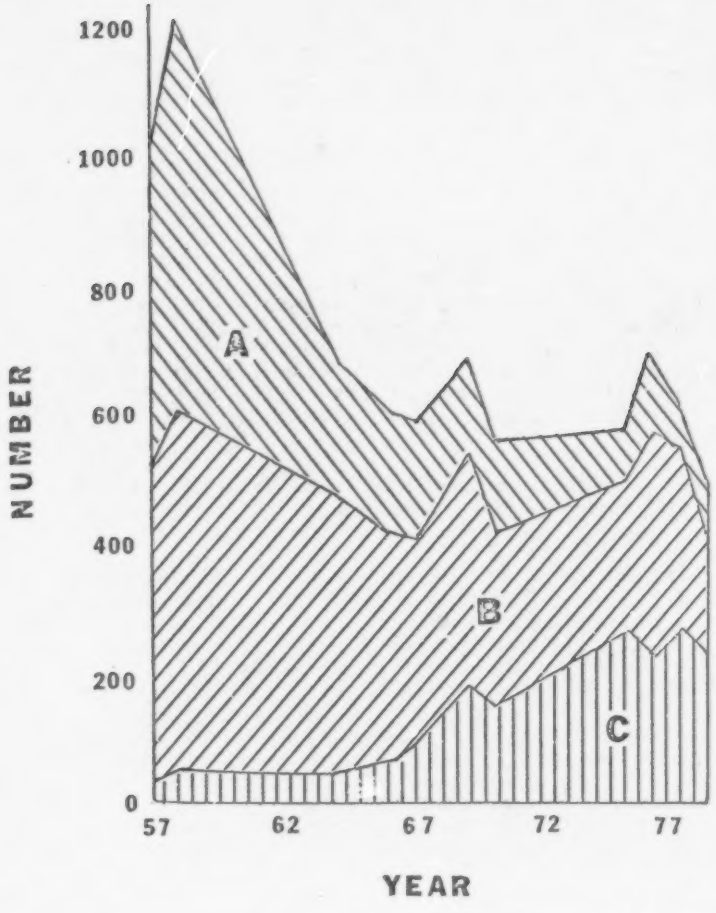

Figure 1. Population trends of Hawaiian monk seals, 1957 - 1978. A) Western islands including: Kure, Midway, and Pearl and Hermes Reef; B) Central Islands including: Lisianski and Laysan; and C) Eastern islands including: Gardner Pinnacles, French Frigate Shoals, Necker and Nihoa.

and later tagging (Rice 1960:379; Kenyon 1972:693) may provide additional clues, but it seems evident that knowledge of the extent of inter-atoll movements will be very important in assessing population dynamics in the future.

Interpreting trends in populations on the basis of a variety of visual counts made in different ways over 20 years is subject to all sorts of uncertainties. Doing so without first-hand knowledge of particular field conditions is even more risky. On the other hand, the past data are not likely to improve with time, and some calculations may help underline the need for better data in the future. Fortunately, certain key counts were made by the same individuals, so that it may be hoped that these individuals can be prevailed on to make the best of the available records before much more time elapses. One of the needs is to try

to utilize the available data to provide as consistent an index of relative abundance as is possible.

Comments and calculations on population trends at the various islands and atolls are relevant in assessing population dynamics, and are included below.

Kure Atoll

Rice (1960) reported 25 pups and 117 older seals present in the spring of 1958, based on a beach survey and 4 aerial surveys. Kenyon (1972) described the impact of human occupancy (a Coast Guard Loran station established in June of 1960, according to Kenyon 1976), resulting in a seal population shift from the main island (Green Island) to nearby sand spits. In 1977 (Johnson and DeLong in prep.) a substantial number of counts were made (85 on Green Island and 12 on the sand spits) and yielded a maximum of 52 seals, only 2 of which were subadult. Ten pups were born, but only one was sighted after weaning. Just when the full impact of human occupancy on pup survival was realized is not suggested in the available reports. A dimunition from 117 older seals in 1958 to 50 in 1977 yields a rate of:

$$r=(-\log_e(50/117)/19=.045$$

or annual survival rate of 0.96. Some successful recruitment very likely occurred, but one cannot help concluding that the Kure population may well be mostly made up of rather old seals.

There is no evidence that human occupancy of Kure Atoll is in itself directly responsible for the apparent failure in pup production. One hypothesis is that shark predation may be the immediate cause, and it might be conjectured that the shift from Green Island to nearby sand spits mentioned above increased the risk of predation.

Midway Atoll

Kenyon (1972, 1976) described the fate of the Midway population. There were 8 pups and 68 adults in the spring of 1958, based on a long series of counts (Rice 1960). By 1968 the population was virtually gone (Kenyon 1972). It seems important to note that Midway was heavily populated (and subject to military action) in the 1940's. If 25 years is a reasonable guess for the time required for the Midway population to be virtually eliminated, one might infer that there are not many years left for monk seals on Kure.

Pearl and Hermes Reef

Six aerial surveys yielded a maximum count of 52 pups and 286 older seals in 1958 (Rice 1960). By 1977 (Johnson and DeLong, in prep.) there were 6 pups and 43 other seals. The sharpest decline seems to have occurred since 1970 (Kenyon 1976), and causes are unknown, although Kenyon (1976) suspected shark predation on pups.

Lisianski and Laysan Island

The course of events on these islands has been described in the references cited above. The Lisianski population decreased more rapidly than that of Laysan. Curves were fit to the data (using midpoints when two counts are available for one year), using both non-linear least-squares on an exponential curve, and linear regression on logarithms of the counts. Coefficients of decrease for Laysan were 0.033 by both methods, while the rate for Lisianski is 0.061 from

the non-linear fit, and 0.048 from the linear fit. The pattern of deviations suggests no particular choice between the two fits (neither is very satisfactory). However, the difference between the two islands seems real enough.

About 20 dead seals were observed on Laysan in 1978 (Johnson and Johnson 1979) where none (other than small pups) were found in a comparable period in 1977. The Johnsons estimated a total loss of about 50 seals may have occurred in 1978, based on disappearance of seals recognizable by natural marks and bleach marks. Ciguatera poisoning is suspected as a possible causative agent (with two positive isolations in two sufficiently fresh specimens, one on Laysan and one on French Frigate Shoals), and may be implicated in some of the marked drops in abundance elsewhere in prior years.

French Frigate Shoals

The 1957-58 data appear to be based on a limited effort by Rice and various observations by others (Rice 1960:376, Kenyon and Rice 1959:220). The available data (Kenyon 1976, Johnson and DeLong, in prep.) thus show an increase from a count of about 40 seals in 1957-58 to over 200 in 1976-78. The major jump in the observed counts (1970-75) covers roughly the same interval as that of the pronounced drop at the Pearl and Hermes Reef. There is on the one hand a very long (roughly 600 nautical miles) stretch of water between the two sites, and on the other a somewhat improbable rate of increase. Fitting an exponential curve to the counts of the "eastern" group gives a decidedly unsatisfactory pattern of deviations for non-linear least-squares, but a rather more satisfactory spread for the log-linear fit. The latter indicates an annual rate of increase of 0.108 which seems somewhat high in contrast to what is presently known about reproductive rates for the species (discussed below).

Information suitable for estimating population parameters is still very limited. However, considerable strides forward in the not too distant future seem likely. Funding for work by both the Fish and Wildlife Service and National Marine Fisheries Service is urgently needed, and hopefully will be forthcoming. Brian and Patricia Johnson have spent long field seasons on Laysan Island from 1977 to date (1981), being supported initially by the Marine Mammal Commission, and more recently by both the Commission and the National Marine Fisheries Service. Their results are as yet only available in annual reports to the Commission, and presumably will be published in more detail at the end of their planned 5 years of research.

Initial indications from the Laysan study (Johnson and Johnson 1979), are that pup mortality in the first six months of life was about 14% in 1977 and in 1978 (Johnson and Johnson 1978). Very possibly these figures will be modified as more data accumulates on identified animals over time. They also reported (Johnson and Johnson 1979) that, of 52 well-identified females seen in both 1977 and 1978, 52% produced pups in 1977 and 48% in 1978. Wirtz (1968) reported 38% of his tagged females produced pups on Kure in 1964 and 1965. Both sources indicated that from 50 to 60% of females producing pups in one year will again do so in the next, thus laying to rest some reports that the species breed biennially. In neither study can the effects of age be eliminated from the pupping rates, i.e., some of the animals no doubt were not fully adult. The Johnsons did, however, observe during 1977 and/or 1978 10 previously tagged (in 1960's, early 1970's) females of known age.

The frequency of pupping for those aged 6-9 (10 observations) was 20%, while 50% of those (8 observations) aged 10 to 13 pupped (one female pupped both as a nine and a ten year old). The figure of 50% is the critical one inasmuch as the long-term experience with northern fur seals suggests an overall pregnancy (not pupping) rate of 60%, but a much higher (90%) pregnancy rate for fully adult females. It should be noted that fur seals reach a peak reproductive rate at an earlier age (between 8 and 10 years of age).

Since the sample of older animals observed by the Johnsons is very small, the rate has very wide confidence limits, and cannot be distinguished from the higher rate of other pinnipeds. Most of the data on other species is from pregnancy determinations (but not all, e.g., a long-term pupping record is available for Weddell seals in Antarctica), and thus need to be adjusted for pre-parturition losses. In any case, the preliminary nature of the findings and the small samples make it advisable to make only a very tentative assumption that the reproductive pattern for Hawaiian monk seals may exhibit somewhat lower rates than those seemingly typical of a range of other pinnipeds. The importance of continuing observations at Laysan needs to be stressed, as does the importance of collecting data elsewhere in the Northwest Hawaiian Islands if sufficient tagged animals can be located and monitored. It may be noted that the opportunity to monitor tagged animals may not be available again due to the endangered nature of the population and its apparent reaction to continued human presence. This is, of course, a matter that requires a judicious choice -- are the data worth the risk?

No direct estimates of survival rate for Hawaiian monk seals are available. A rate of 95% per year was suggested above from the Kure data on counts of older seals in 1958 and in 1977. This rate is subject to any successful recruitment or immigration in the interval. An alternate approach is to consider the long-term decline of the western population, which gives a rate of decline of about 10%.

Size of the total Hawaiian monk seal population is an unknown at present. The most recent count (500 in 1978) is undoubtedly an underestimate due to the fact that some seals are always at sea. The best evidence thus far is from population estimates at Laysan (Johnson and Johnson 1980), where several estimation schemes have been tried on the substantial number of identified seals now established. The results suggest that about 300 seals were present when mean counts were 94 animals (adults only). There is thus the suggestion that counts on Laysan might represent roughly one-third of the total population present (i.e., the total population would be approximately 1500 animals). However, if an adjustment based on this fraction is to be applied to other islands (assuming one-third of the seals were seen on the other islands as is suggested for Laysan) it would be necessary to insure that counts on each island are made at the same time of day and season. Quite surely such an adjustment cannot be safely extrapolated to the other islands. If one assumes that as much as one-half of the animals are counted on each island at the same time then there would be a total population of approximately 1000 animals. Kenyon (1978:5) estimates current size at 700 to 1,000 animals.

Population trends have been discussed above for individual areas. In summary, it appears that the western segment of the population has been decreasing at an exponential rate on the order of 10% per year. The available evidence suggests that this loss is due to a virtual failure of recruitment, and it may be speculated that some part of the loss here and

in the central group (Lisianski and Laysan, Fig. 2) may be contributing in part to the 10% annual rate of growth in the eastern segment (principally French Frigate Shoals). The central population seems also to be losing ground, as noted above with a higher rate of decline at Lisianski (6%), that at Laysan (3%). Overall, one cannot help but suspect some influence operating from west to east. One hypothesis may be postulated as human influence. A possible test is to attempt to reverse the trend on Kure, which might well require a full time "seal warden". Unhappily, the bulk of the Kure Island population seems to be over 20 years of age, so time is very much against the seals on Kure. An experimental attempt to hold part of the pup population inside an enclosure through the presumed critical post-weaning period was planned for 1981 at Kure.

What of the future for Hawaiian monk seals? Much will depend on the on-going deliberations of the recovery team and its development of a Hawaiian Monk Seal Recovery Plan, the needed decisions on "critical habitat" (Cf. Kenyon 1978), research funding, and educational efforts directed at military, including the Coast Guard and scientific personnel who visit and work in the Leewards. On the research side, critical decisions will involve assessing the risks taken for better knowledge versus the concomitant disturbance involved in, for example, marking or tagging these endangered seals. Certainly behavioral research needs careful consideration in this respect, as does further investigation of the impact of human presence and interactions with monk seals. It also will be essential to monitor to detect "die-offs" such as the Johnsons observed on Laysan Island in 1978, and it may be necessary to handle such animals in an attempt to save them.

A crucial issue with respect to the future is the burgeoning interest in fishery development in the Leeward Islands. A 1977 "tripartite" agreement (National Marine Fisheries Service, Department of Land and Natural Resources of the State of Hawaii, and U. S. Fish and Wildlife Service) resulted in the initiation of a 5-year survey of the land and marine resources of the Northwestern Hawaiian Islands, including potential fishery resources. More recently, it has been reported that the legislature of the State of Hawaii appropriated $186,000 for experimental fisheries investigations in the vicinity of the Leeward Islands (draft report of an ad hoc workshop on monk seals, College of Fisheries, University of Washington, August 30, 1979). A fishery for spiny lobster has developed in the Northwest Hawaiian Islands as have other fisheries (Western Pacific Management Council 1980). The effect of these fisheries, especially that of the lobster fishery, on Hawaiian monk seals is unknown.

One final speculation may be worth mention. This is the possible role of dispersal in maintaining populations of monk seals over their widely spread habitat. The Laysan population was apparently extirpated early in the 20th century (see Kenyon 1976), but recovered by the 1950's. Such repopulation may depend not on surplus from populations near maximum, but instead on a continuing dispersal. It seems quite likely that the continued existence of the kind of "sink" (no recruitment from reproduction) currently observed in the western area may be a drain that the species cannot accommodate from its present low numbers, and in the face of continuing human intrusion in the Leewards.

ADDENDUM

The preceding overview of the status of Hawaiian monk seals indicates, in both general and specific terms, what

additional research is required if the species is to be protected and conserved. Of the utmost importance is the completion of the Hawaiian Monk Seal Recovery Plan by the Hawaiian Monk Seal Recovery Team. It is expected that this plan will identify and assign priorities to specific research topics as well as providing a rationale as to the importance that each has for the recovery, conservation and protection of the Hawaiian monk seal and its habitat. The studies should include: (1) surveys to: (a) detect die-offs such as occurred on Laysan Island in 1978; (b) assess and monitor the size, age and sex composition, productivity, and behavior of monk seal populations on French Frigate Shoals, and other Northwest Hawaiian Islands; (c) collect spewings and feces for dietary analysis; and (d) salvage specimen material from beached carcasses; (2) an observer program to determine the nature and extent of interactions with the spiny lobster fishery and other fisheries; and (3) a tracking and dive-profile study to determine activity and habitat-use patterns of monk seals in areas where they may be affected directly or indirectly by fisheries. Wherever possible, the field program should be designed to integrate both survey and observer programs. The studies should also be designed and coordinated with other on-going studies in the Northwest Hawaiian Islands so that the overall impact of these studies on Hawaiian monk seals and other endangered species is minimized.

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ATTACHMENT D

MARINE MAMMAL COMMISSION
1625 EYE STREET, N. W.
WASHINGTON, DC 20006

6 March 1981

Mr. Terry L. Leitzell
Assistant Administrator for Fisheries
National Marine Fisheries Service
Page Building 2, Room 400
Washington, D.C. 20235

Dear Terry:

In the last year, the Service, in consultation with the Commission and others, has taken steps to: provide a better assessment of the status of the Hawaiian monk seal population(s) and their habitat in the Northwestern Hawaiian Islands; identify the possible cause or causes of the monk seal population decline; and determine actions that should be taken to protect and encourage recovery of the population(s). Among other things, the Service has: (1) constituted a Hawaiian Monk Seal Recovery Team; (2) circulated and received comments on a "Draft Environmental Impact Statement on the Proposed Designation of Critical Habitat for the Hawaiian Monk Seal in the Northwestern Hawaiian Islands"; (3) provided a biological opinion on the proposed management plan for the Spiny Lobster Fisheries of the Western Pacific Region; and (4) in cooperation with the Commission: (a) convened a workshop to develop a "die-off" response plan; (b) continued the in-depth study of monk seals on Laysan Island; (c) conducted a pilot study to evaluate the potential utility and safety of using radio-tags and dive-profile recorders to assess the activity patterns and habitat-use patterns of monk seals; and (d) initiated a comprehensive analysis of the data from the Laysan Island study.

The Commission is uncertain as to the current status of these efforts and the Service's plans for 1981 and beyond. Therefore, we request that you advise us as to:

- the anticipated number, dates, and location of recovery team meetings to be held in 1981;
- the Service's plans and anticipated schedule for reviewing and completing the draft monk seal recovery plan by the June 1981 target date;
- how much the Service has budgeted for monk seal-related research and management activities in 1981;
- what monk seal-related research the Service plans to conduct or support in FY 81;
- when the Service plans to make a decision concerning critical habitat determination;
- when the "die-off" contingency plan is expected to be completed and what steps the Service has taken or plans to take to detect and respond in the event of another die-off such as occurred on Laysan Island in 1978; and
- when we can expect to receive the reports from the 1980 studies on Laysan and Lisianski Islands.

We would also like to know if either the recovery team or the recovery team leader was asked to comment on the DEIS for critical habitat determination and/or the proposed management plan for the Spiny Lobster Fisheries in the Western Pacific Region and, if comments were made, to receive copies thereof. And, as a last point, what are the steps that are being taken to develop management plans for other fisheries in the Northwestern Hawaiian Islands and to assure that developing fisheries do not adversely affect monk seals or their habitat.

I would be grateful for a response to these questions by 17 March since the field season is soon to begin and since the status of monk seal work, particularly as it is affected by the budget, may well be brought up during the Re-authorization Hearings.

If you or your staff have any questions concerning this request, I shall be pleased to answer them.

Sincerely,

John R. Twiss, Jr.
Executive Director

ATTACHMENT E

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Washington, D.C. 20235

MAR 23 1981

Mr. John R. Twiss, Jr.
Executive Director
Marine Mammal Commission
1625 Eye Street, N.W.
Washington, D.C. 20006

Dear John,

Your letter of March 6, 1981, regarding the Hawaiian monk seal, has been received. We have requested our Southwest Fisheries Center and Southwest Regional Office to supply us with material which will answer your questions. Once this material is received, we will respond in full to the matters raised in your letter.

Sincerely yours,

Terry L. Leitzell
Assistant Administrator
for Fisheries

MAR 31 1981

Mr. John R. Twiss, Jr.
Executive Director
Marine Mammal Commission
1625 Eye Street, N.W.
Washington, D.C. 20006

Dear John,

This is in further response to your letter of March 6, 1981, requesting an update on National Marine Fisheries Service activities relating to the Hawaiian monk seal. We will address your concerns in the order in which you raised them.

The Hawaiian Monk Seal Recovery Team met four times in 1980, the latest was in December. Due to cuts in travel allocations for FY 81, only one meeting will be scheduled during 1981 to review the final draft recovery plan.

The completion date for the draft recovery plan originally scheduled for June 1, 1981, has been extended until September 30, 1981. This extension is to allow the inclusion of the results from Dr. Gilmartin's research on monk seal pup survival at Kure Atoll.

Fiscal Year 81 budget estimates for monk seal management and enforcement activities is about $20K; the monk seal research program will receive about $67.8K in FY 81. Although an additional $275K has been reprogrammed from other endangered species funds, this reprogramming has not yet been approved by National Oceanic and Atmospheric Administration.

Ongoing and planned monk seal research in FY 81 include:

* A quarterly seal census of the Northwestern Hawaiian Islands.

* A 3-month field camp at Laysan Island to continue collection of data on fertility rates, age of first reproduction, and other parameters.

* A capture and temporary maintenance of monk seal pups at Kure Atoll to increase pup survival. This project will include an intensive observational program to aid in definition of the problems at that atoll.

* Computer services, data analyses, and clerical consultation and support of Brian and Patricia Johnson in preparation of a summary report on their Laysan Island studies (1977-1979).

* A cooperative study with the U.S. Fish and Wildlife Service to determine the feasibility of using aerial survey techniques to census Hawaiian monk seals.

Other planned FY 81 research such as depth of dive, radiotelemetry, ciguatera treatment, and stock assessment studies are being postponed at this time, due to budgetary limitations.

The proposal to designate critical habitat for the Hawaiian monk seal in the Northwestern Hawaiian Islands (NWHI) has been deferred. The NMFS Southwest Region is currently discussing with the Western Pacific Fishery Management Council (WPFMC) and the State of Hawaii, alternative management measures to protect monk seals. A copy of the comments submitted by the Recovery Team on the draft environmental impact statement on critical habitat are enclosed.

Although the Recovery Team was not requested to comment on the spiny lobster fishery management plan (FMP), individual team members were contacted by the Southwest Region staff concerning various aspects on the biology of the monk seals during the FMP Section 7 consultation process. In addition to the Section 7 consultation process, FMPs are critically evaluated by NMFS staff, especially in determining whether the Council has adequately addressed National Standard No. 1. To illustrate our concern over the well-being of the monk seal, I have enclosed that portion of our analysis of the Spiny Lobster FMP which discusses monk seals. I believe that we utilize the expertise of the individual Recovery Team members to the best advantage during the Section 7 consultations with the WPFMC on their bottomfish FMP.

The final report of the 1980 Lisianski Island depth of dive and radiotelemetry studies on monk seals is expected to be completed during May 1981. The "die-off" contingency plan has undergone a first draft review and a final draft plan is expected to be completed by June 1, 1981. This will be forwarded to the Commission for review. The Laysan Island study was conducted by the Johnsons. A copy of their report will be forwarded to you by the Southwest Fisheries Center under a separate cover.

I trust that the above adequately responds to your inquiries.

Sincerely yours,

Richard B. Roe for

Terry L. Leitzell
Assistant Administrator
for Fisheries

October 9, 1980

To: Alan Ford, Regional Director, Southwest Region, F/SWR

From: William G. Gilmartin, Hawaiian Monk Seal Recovery Team Leader, Honolulu Laboratory, F/SWC2

Subject: Hawaiian Monk Seal Recovery Team Position Statement on Critical Habitat for the Hawaiian Monk Seal

The Hawaiian Monk Seal Recovery Team, in response to a request from your office, has reviewed the Critical Habitat DEIS, public comments made on the DEIS, and the results of the monk seal depth of dive study performed at Lisianski Island in the spring of 1980. The position statement of the team prepared at its 25-27 September 1980 meeting is attached.

In addition to this statement, the team further recommended that a formal proposal and EIS for the designation of monk seal critical habitat include a more thorough discussion of the legal implications of the action. Confusion among the public regarding the distinction between existing legal protection for the seal and expanded protection after critical habitat designation has complicated the review process unnecessarily. The degree of "Federal involvement" in the promulgation and enforcement of regulations pertaining to critical habitat needs to be clearly stated. Activities which are likely to be restricted or prohibited within critical habitat, that would not otherwise be affected under existing protection, should be discussed so the public can fully interpret the significance of the critical habitat designation.

Dr. Gerald Kooyman, the only team member absent at the 25-27 September meeting, is in the field and unavailable for comment at this time. On his return, I will ask him to prepare a statement on the proposed critical habitat for monk seals which I will forward to you.

HAWAIIAN MONK SEAL RECOVERY TEAM

STATEMENT ON PROPOSED CRITICAL HABITAT FOR THE HAWAIIAN MONK SEAL

27 September 1980

The Hawaiian Monk Seal Recovery Team, at both the 8-10 August and 25-27 September 1980 meetings, considered at length the designation of critical habitat for the monk seal. It was the consensus of the team that critical habitat should be formally proposed and designated to promote the conservation of this species.

After a thorough review of pertinent data, including the results of depth of dive studies conducted on Lisianski Island during 1980, the majority of the team agreed that critical habitat should include all beach areas, lava benches, lagoon waters, submerged lands, and waters to a depth of 20 fathoms in the Northwestern Hawaiian Islands as listed in Enclosure 1. Although the Lisianski study depth of dive data and other observations substantiate the use of waters beyond 20 fathoms by seals, it was agreed that additional research and observations are needed in the determination of the significance of these deeper waters to the recovery of the species. The majority of the team members agreed that if additional data from other sites and from other animals substantiate the 1980 Lisianski field work results or extend the record of diving into deeper waters, then it would be justified to consider expansion of critical habitat boundary beyond the 20-fathom line at a future date.

Several factors were considered in the team's consensus that the 20-fathom line may be a conservative estimate of the amount of habitat critical to the survival of the species: (1) Food habit studies indicate monk seals feed on bottom and reef inhabiting fishes and invertebrates and these identified food species range from shallow water to depths beyond 20 fathoms;

(2) Dives were recorded in the 1980 Lisianski study to depths greater than 20 fathoms; (3) Data from Laysan Island and Kure Atoll indicate that adult females leave the beaches for periods lasting 10-30 days or more. Also, observations indicate that these animals do not occupy nearshore waters near the islands during this exodus period; and (4) Interisland movement is well documented by tag returns.

It should be noted that the team's recommendation for critical habitat designation at 20 fathoms was not unanimous (two members dissented and G. L. Kooyman was absent from the meeting). Concern was raised by one member of the team that the available data are not sufficient to justify, on biological grounds, the designation of critical habitat beyond 10 fathoms. A second team member felt that present data did not support designation beyond the beaches, lava benches, and nearshore waters at this time. The second opinion also pointed out that the Lisianski depth of dive studies did not determine whether or not the animals were actually feeding during recorded dives, or determine the significance of the recorded diving activities to recovery of the species.

In response to concerns raised above, team members in the majority felt the Lisianski dive data, food habits data, documented records of interisland movement, and repeated observations of seals from boats in much deeper water all supported their conclusion regarding significance of waters beyond nearshore waters or 10 fathoms. In addition, it was agreed that extrapolation of Lisianski data to other islands was justified, in large part because the bottom topography surrounding Lisianski Island requires animals to travel significantly farther to reach depths beyond 20 fathoms than is the case at other islands in the Northwestern Hawaiian Islands. This being the case, the relative proximity of deeper waters at sites other than Lisianski lead us to conclude that diving beyond 20 fathoms may be more frequent than recorded at Lisianski. It was noted that the three most active diving adult males in the 1980 Lisianski study were instrumented for 18 to 20 days during which time they accomplished 4,691 dives, a substantial portion of which are assumed to have been feeding dives. In addition, the fact that instrumented animals spent a considerable amount of their dive time in waters beyond 10 fathoms indicates that this deeper water habitat is critical to recovery of the species, regardless of whether or not feeding occurred on some or all of these dives.

Enclosure

PROPOSED AREAS TO BE INCLUDED IN CRITICAL HABITAT
FOR THE HAWAIIAN MONK SEAL

The intent of our recommendation is that all land, submerged land, and water areas within the 20-fathom isobath at the areas listed be designated critical habitat, with exceptions as outlined below.

Critical habitat should include beach areas, lava benches, submerged lands, lagoon waters, and all waters out to 20 fathoms from the low low watermark or barrier reef at Kure Atoll, Midway Islands (except Sand Island), Pearl and Hermes Reef, Lisianski Island, Laysan Island, French Frigate Shoals, and Necker Island. This list also includes similar habitat at three locations not in the DEIS for proposed critical habitat for the Hawaiian monk seal: (1) Nihoa, where pups were born in 1979 and 1980, (2) Gardner Pinnacles, where monk seals are seen in the water and hauled out, and (3) Maro Reef, where monk seals are frequently observed in the water.

The specific land and water areas to be included for each atoll or island are defined as follows:

1. Kure Atoll. The land area to be designated should include all of Sand Island, intermittent sand islets and spits, and on Green Island from the low low watermark to 50 feet inland beyond the vegetation line. Critical habitat should

also include all lagoon waters and all other water areas and submerged lands encompassed by the 20-fathom isobath.

2. Midway Islands. The land area to be designated should include Eastern Island from the low low watermark to 100 feet inland beyond the vegetation line, and all of the spit islands. Critical habitat should also include all lagoon waters and all water areas and submerged lands encompassed by the 20-fathom isobath.

3. Pearl and Hermes Reef. The land area to be designated should include all of the permanent islands and intermittent sand islets. Critical habitat should also include all of the lagoon waters and all water areas and submerged lands encompassed by the 20-fathom isobath.

4. Lisianski Island. The area to be designated should include the land from the low low watermark to 100 feet inland beyond the vegetation line around the island. Critical habitat should also include the water areas and submerged lands encompassed by the 20-fathom isobath.

5. Laysan Island. The area to be designated should include the land from the low low watermark to 100 feet inland beyond the vegetation line around the island. Critical habitat should also include all of the water and submerged lands encompassed by the 20-fathom isobath.

6. Gardner Pinnacles. The land area to be designated should include all of Gardner Pinnacles. Critical habitat should also include all water and submerged lands encompassed by the 20-fathom isobath.

7. French Frigate Shoals. The land area to be designated should include all the islands including La Perouse. Critical habitat should also include all of the lagoon waters and other waters and submerged lands enclosed by the 20-fathom isobath.

8. Necker Island. The land area to be designated should include all lava benches and beaches enclosed by the 20-fathom isobath.

9. Nihoa Island. The land area to be designated should include the beaches at Derby's Landing and the lava benches. Critical habitat should also include all waters and submerged lands encompassed by the 20-fathom isobath.

10. Maro Reef. The exposed reefs, water areas, and submerged lands enclosed by the 20-fathom isobath.

ATTACHMENT F

Excerpt from the Commission's Annual Report
for Calendar Year 1980

CHAPTER III

ENDANGERED, THREATENED, AND DEPLETED SPECIES

The Commission reviews the status of marine mammal populations and makes recommendations for appropriate actions and designations under the Marine Mammal Protection Act and the Endangered Species Act.

In 1980, the Commission devoted particular attention to the West Indian manatee, Hawaiian monk seal, California sea otter, the bowhead whale, the gray whale, and the humpback whale.

The California Sea Otter Population

Since the small, remnant population of sea otters in California could be reduced substantially by oil spills or other catastrophic events, the California sea otter was designated as "threatened" under the Endangered Species Act in January 1977. Available information also indicates that sea otters may play an important role in determining the structure of marine communities of which they are a part. They eat abalone and other shellfish of commercial or recreational importance, and make it difficult to maintain viable fisheries for these species in areas inhabited by sea otters. On the other hand, their presence serves to beneficially affect the growth of kelp, a product of commercial significance, which also provides habitat for certain species of finfish of recreational and commercial importance. Management of the California sea otter population must take these interactions into account as well as the "threatened" status of the population.

The Fish and Wildlife Service, responsible for the management of sea otters and other species under the authority of the Endangered Species Act and the Marine Mammal Protection Act, viewed the sea otter problem as one of relatively low priority until 1979. However, at the May 1979 meeting of the Commission and its Committee of Scientific Advisors on Marine Mammals, Service representatives advised the Commission that California sea otters were to be afforded higher priority and that efforts were to be undertaken to develop a recovery plan. Nonetheless, decisions concerning the timing, content, and responsibility for development of the recovery plan had not yet been made by late summer, and, on 23 August 1979, the Commission wrote the Service to determine whether any decisions had been made as well as to elaborate its views on a number of issues discussed during the May meeting. In a further effort to catalyze action, the Commission convened a meeting in California on 13 December 1979 to discuss a variety of related issues with representatives of the Service, the California Department of Fish and Game, and the State of California's Scientific Advisory Committee on Sea Otters (for a detailed discussion, see the 1979 Annual Report).

By early May 1980, the Commission had not received a reply to its 23 August 1979 letter. Although some of the points raised in that letter had been discussed at the 13 December meeting, the precise actions which were being taken by the Service to prepare a recovery plan and to resolve related issues remained unclear. Therefore, on 1 May,

Commission and Service representatives met to review on-going and planned activities, and by letter of 21 May 1980,

the Service assured the Commission that actions identified at the 13 December meeting would be incorporated into the sea otter recovery plan being drafted by the Service. To facilitate completion and implementation of the recovery plan, it was agreed that a second meeting with representatives of the California Department of Fish and Game and the State's Scientific Advisory Committee on Sea Otters should be held and that the Service would complete and distribute a Technical Review Draft of the Recovery Plan sufficiently in advance of the meeting to allow time for incorporating comments into a revised plan which could serve as a focus for meeting discussions.

On 19 June, the Commission received the Technical Review Draft of the Southern Sea Otter Recovery Plan, and, in consultation with its Committee of Scientific Advisors on Marine Mammals, commented to the Service by letter of 10 July. The Commission noted that while the introductory and background sections of the Plan were useful and required relatively little work, the Plan itself was incomplete and useful only as a starting point. Therefore, the Commission suggested that the planned meeting with State representatives be used to: review and discuss comments on the Technical Review Draft; discuss and agree upon the objectives, format, and content of the recovery plan; determine appropriate steps to expedite development, adoption, and implementation of the Plan, including consideration of the proposal to establish a Sea Otter Recovery Team; identify research and management actions to be undertaken immediately; and assign responsibility for those actions.

Although the Technical Review Draft of the Recovery Plan indicated that the Service had adopted some of the recommendations made in the Commission's 23 August 1979 letter, it was apparent that not all of them had been adopted. Therefore, the Commission included copies of that letter with its 10 July comments on the draft Plan. In addition, on 11 July 1980, the Commission requested that the Service clarify its position with respect to certain recommendations during or before the meeting with representatives of the California Department of Fish and Game and the State's Scientific Advisory Committee on Sea Otters. Specifically, the Commission asked to be advised as to: whether the fact that the draft plan did not directly address the effects of sea otter/fisheries interactions was an oversight or indicated that the Service did not share the Commission's view that restoring the Southern sea otter population to its optimum sustainable level would require resolving fundamental issues concerning sea otter/fishery conflict as well as the potential adverse impact of human activities on the sea otters; whether the lack of detail in the draft Plan indicated that the Service did not concur with the Commission's view that the recovery plan should identify precisely what actions must be taken, by whom, when, and with what resources; and what steps the Service had taken or planned to take to compile and evaluate information on: (a) the distribution and density of sea otters in California and adjacent areas; (b) related fishery resources and fisheries; (c) biological productivity and other characteristics of current and potential sea otter habitats; (d) the possible direct and indirect effects of present and proposed human activities on sea otters and/or their habitats; and (e) such other data as may be relevant to decisions relating to the protection and conservation of the Southern sea otter population. In addition, the Commission asked to be advised of the procedure and schedule for finalizing the recovery plan, and the specific research and management actions that would be undertaken before the recovery plan is finalized, adopted, and implemented.

On 24 and 25 July, representatives of the Service, the Commission, the California Department of Fish and Game, and the State's Scientific Advisory Committee on Sea Otters met in California to: discuss actions needed to complete the

sea otter recovery plan, identify priority tasks to be undertaken immediately; and agree on agency responsibilities for carrying out identified tasks. At the meeting, it was noted that: the manager of the Service's Sacramento office had been designated the Service's sea otter spokesperson; the Service had determined that, because of deficiencies in the first draft, a second Technical Review Draft of the Southern Sea Otter Recovery Plan would be prepared; and a small group of sea otter experts was being organized by the Service to assist with preparations of the second Technical Review Draft. Participants agreed that every effort should be made to complete the second draft by the end of September 1980, and that the Service would consult with the California Department of Fish and Game in assessing the suitability of potential sites for establishing one or more sea otter colonies outside the present range in California.

In late September, the Commission learned that the Service, under contract to the Bureau of Land Management, was completing "An Ecological Characterization of the Central and Northern California Coastal Region", and that it had also requested proposals to do an inventory of Pacific Coast ecological resources which might be affected by the coastal siting of refineries, processing plants, and transportation systems for oil and gas. Since the studies appeared to be potentially duplicative and also appeared to bear on the Commission's 23 August 1979 recommendation that the Service undertake efforts to generate a series of maps and accompanying text summarizing available biological, ecological, and socio-economic information to be considered in determining the optimal management strategy for the California sea otter, the Commission requested by letter of 2 October that the Service advise it on the relationships between the two studies and on actions the Service had taken to compile and map relevant biological, ecological, and socio-economic information.

The Service's 18 November response to the Commission's inquiry indicated that although the "ecological characterization" and the "ecological inventory" were closely related, they were not duplicative and neither would provide the level of detail envisioned by the Commission's recommendations. The letter also described the Service's on-going efforts to compile and evaluate information needed to resolve issues concerning the protection and management of the California sea otter.

Although the Service's 18 November letter indicated that steps were being taken to resolve the problem, progress was less than expected, and on 2 December, the Commission wrote to the Service expressing concern. Noting that resolution of the problem will require decisions and actions to secure the population from threats associated with human activities, restore the population to its optimum sustainable level, and minimize conflicts between sea otters and fisheries, the Commission expressed the view that on-going efforts must be more clearly focused and structured. The Commission recommended that the Service adopt and implement an approach which, among other things, recognizes the ultimate need for "zonal management" of sea otters and the need to establish at least one additional group of otters, as soon as possible, at a site unlikely to be affected by a spill occurring in the present range.

At the end of 1980, the Service had not yet completed the second Technical Review Draft of the Southern Sea Otter Recovery Plan or formally responded to the Commission's letter of 2 December. The Commission had been advised, however, that the second Technical Review Draft would be completed and distributed in early 1981, and that the revised draft would address many, if not all, of the points raised in the Commission's 2 December letter.

ATTACHMENT G

Excerpt from the Commission's Annual Report
for Calendar Year 1980

CHAPTER VI

REQUEST FOR RETURN OF MARINE MAMMAL MANAGEMENT
BY THE STATE OF ALASKA

Under the Act, the Secretaries of Commerce and the Interior, in consultation with the Commission, may waive the moratorium on the taking of marine mammals, promulgate regulations to govern permitted taking, and return management to a state if such a waiver and return of management is determined to be consistent with the goals and provisions of the Act.

On 31 January 1973, the State of Alaska submitted a request to the Secretaries of Commerce and the Interior for a waiver of the moratorium and return of management of 10 species of marine mammals polar bear, sea otter, Steller sea lion, bearded seal, harbor seal, larga seal, ribbon seal, ringed seal, beluga whale, and walrus. Although such a return of management to a state is generally consistent with the policies and provisions of the Act, delays in the course of proceedings relating to this request and disagreement with respect to a variety of procedural and substantive issues impaired efforts to respond to the request and the issues remained unresolved at the end of 1980. Summaries of the events and the Commission's activities and recommendations relating to this matter through 1979 are presented in the Commission's previous Annual Reports. The discussion which follows briefly summarizes that background and the status of research and management efforts in 1980.

Background

Factors giving rise to many of the difficulties associated with the request by the State of Alaska may be summarized as follows: the State's request sought a waiver as well as a return of management and, as a result, required formal hearings before an administrative law judge on the status of the populations and the expected effects of the proposed takings as well as consideration of the proposed laws and regulations that would govern such taking; the Act required that decisions on the waiver be based upon "the record" adduced at the formal hearings; the proposed waiver of the moratorium to allow taking of marine mammals required compliance with the provisions of the National Environmental Policy Act; the State's request was the first such request under the Act and neither the Federal nor the State officials were yet familiar with the procedural or substantive requirements of the Marine Mammal Protection Act or the National Environmental Policy Act; in addition to the lack of experience and familiarity with the applicable law and procedures, many of the Federal officials and interested public were not familiar with the atypical nature and extent of the complex and difficult marine mammal issues in Alaska; seven of the species (Steller sea lion, bearded seal, harbor seal, larga seal, ribbon seal, ringed seal, and beluga whale) were subject to the jurisdiction of the Secretary of Commerce, while the other three species (polar bear, sea otter, and walrus) were

subject to the jurisdiction of the Secretary of the Interior; and this bifurcation of jurisdiction required consideration and decisions by two separate agencies and compounded the problems.

Although these difficulties delayed action on the State's request, the Commission had hoped that most of the issues had been or could be resolved and that effective Federal-State management efforts consistent with the Act could finally be implemented for all ten species in 1979. The waiver of the moratorium and return of management of walrus was approved by the Director of the Fish and Wildlife Service in December 1975, subject to certain changes being made in the State's proposed laws and regulations. The State submitted modified laws and regulations which were approved by the Director in April 1976 and the State resumed management of walrus with quotas and other measures applicable to the taking of walrus by natives and non-natives. The waiver of the moratorium and return of management of the other species was approved in January 1979, again subject to certain changes being made in the State's laws and regulations before it could be effected and subject to a further condition that a scientific workshop be convened to continue the evaluation of data and research efforts relating to the affected marine mammal populations. Representatives of the Commission and its Committee of Scientific Advisors participated in that workshop which was organized by the Alaska Department of Fish and Game and convened on 11-13 January 1979. In addition, while representatives of the State of Alaska expressed disagreement with some aspects of the January 1979 conditional decision to waive the moratorium and return management, they indicated a desire to work with Federal officials to resolve the problems. Meetings to discuss and develop a mutually acceptable resolution of issues relating to the language of the decision and to draft the necessary modifications of laws and regulations appeared to be progressing well.

Unfortunately, this apparent progress in resolving most of the issues relating to the waiver and return of management was slowed, if not stopped, by difficulties associated with the "native exemption" clause set forth in Section 101(b) of the Act. In April 1979, U.S. District Court Judge Harold H. Greene issued an order denying the Federal government's motion to dismiss a lawsuit brought by Alaskan natives (People of Togiak v. United States) challenging the authority of the Director of the Fish and Wildlife Service to delegate to the State the authority to regulate the taking of walrus. In its opinion explaining why it had denied the Government's motion, the Court expressed its view that the "native exemption" clause in the Act constituted a Congressionally-mandated permit allowing Alaskan natives to hunt non-depleted walrus in a non-wasteful manner for subsistence and native handicraft purposes and that inconsistent laws and regulations of the State attempting to limit taking by natives in that manner and for those purposes were pre-empted. On 29 January 1980, Judge Greene issued a final decision, supportive of the earlier Court opinion, in which he ordered and declared that Alaskan natives "have the right to hunt non-depleted Pacific walrus in a non-wasteful manner for the purposes specified in the Marine Mammal Protection Act", and enjoined the Department of the Interior "from delegating authority to manage or regulate the taking of Pacific walrus to the State of Alaska as long as there is in effect any state law or official regulation of the State of Alaska relating to the taking or protection of walrus which has the substantial purpose and effect of limiting the rights of Native Alaskans

to take walrus for subsistence and other purposes consistent with the Marine Mammal Protection Act."

The State's walrus program which had been approved by the Director of the Fish and Wildlife Service included limits in the form of quotas and other regulatory measures applicable to the taking of non-depleted walrus by native Alaskans and, as such, were not limited to insuring that the taking by natives was non-wasteful and for subsistence and handicraft purposes. Anticipating the likely impacts of Judge Greene's April 1979 statement concerning the native exemption clause, the State advised the Fish and Wildlife Service in June 1979 of its intent to return management of walrus to the Fish and Wildlife Service, effective 1 July, unless there were satisfactory resolution of issues relating to the waiver and the legal authority to regulate native taking. On 27 June, the Alaska Board of Game adopted emergency regulations that effectively terminated most of the State's walrus management and law enforcement activities. In response and in recognition of the fact that there was no longer a State management program in effect to govern taking of walrus under the waiver, the Director of the Fish and Wildlife Service, after consultation with the Commission, published notice on 2 August 1979 of his decision to disapprove Alaska's walrus regulations and suspend the waiver of the moratorium and return management of the other species were deferred until the questions relating to the native exemption clause were resolved.

Research and Management Efforts in 1980

The effect of the series of actions described above was to return responsibility for managing walrus back to the Fish and Wildlife Service and to leave responsibility for other species with the Fish and Wildlife Service and the National Marine Fisheries Service, with a moratorium on all but native taking under the native exemption clause of the Act. No progress was achieved in resolving these issues during 1980 and, in the absence of the waiver and return of management to the State, the Commission transmitted recommendations relating to essential research and management efforts relating to walrus and polar bears, as discussed below.

Walrus

In recognition of the need to continue monitoring the harvest of walrus by natives, the Commission wrote to the Fish and Wildlife Service on 30 October 1979 noting the need to make the necessary logistical and funding arrangements for the conduct of a well-designed and coordinated harvest monitoring and sampling program. The Commission recommended that the Service commit funds for the support of such a program and make arrangements for its design and conduct and, for this purpose, that it explore the feasibility of providing funds to the Eskimo Walrus Commission to design and conduct the program in consultation with and with the assistance of representatives of the State of Alaska and the Service. In addition, the Commission noted that the broader and more difficult walrus management issues also warranted attention and that some fundamental decisions needed to be made to resolve the problems relating to walrus and other species in Alaska. The Commission suggested that the Service convene a meeting of interested persons in Alaska to discuss these issues frankly and in sufficient detail to provide a basis for the necessary decisions and actions.

In its letter to the Commission of 7 October 1980, the Fish and Wildlife Service summarized its efforts to monitor the walrus harvest during the spring of 1980, noting that: Fish and Wildlife Service personnel monitored portions of the spring harvest at Nome, Little Diomede, Savoonga, Gambell, and Wales and collected biological samples and harvest data at all five villages; the purpose of these efforts was not to estimate the total harvest but to collect biological samples to provide insight into the health of the walrus population summering in the northern Bering and southern Chukchi Seas; a total of 2,321 walrus were estimated to have been taken at the five villages while Fish and Wildlife personnel were present; in addition to those animals killed and reported at the five villages, more than 500 carcasses were counted by the third week of July; analyses of the samples had begun and were expected to be completed in December 1980; and, if funds were available, similar monitoring efforts would be conducted during 1981 at the same villages and possibly additional villages adjacent to Bristol Bay with the specific intent to obtain estimates of the total harvest of walrus.

Polar Bears

On 3 March 1980 the Commission wrote to the Fish and Wildlife Service to express its concern about the potential adverse impact of unregulated taking of polar bears in Alaska. The Commission noted that recent reports suggested that the unregulated taking of polar bears may be resulting in the taking of increased numbers of females with young and that the Commission was uncertain as to whether or not the Service had been conducting a program to monitor the taking of polar bears by Alaskan natives. The Commission therefore requested that the Service provide as much information as possible on: (1) the number, age, sex, location of kill, etc., of polar bears taken in Alaska for the years following those for which information was presented during the 1976 proceedings associated with return of management to the State of Alaska; (2) its best estimate of the impact of such taking on the polar bear population; (3) its evaluation as to whether or not the affected polar bear population should be designated as "depleted" under the Marine Mammal Protection Act and regulations promulgated so as to regulate taking; and (4) if the Service concluded that such designation would be appropriate, its schedule for proposing and implementing such designation and regulations. The Commission recommended that, if the Service did not have the information necessary to determine whether or not the polar bear populations were depleted, it establish procedures to monitor the harvest and to obtain such information.

The Service responded to the Commission's request for information by letter of 29 April 1980 indicating that based upon the available information, it could not form an opinion as to whether or not the polar bear populations should be designated as depleted. The Service noted that: information on the number of polar bears killed since 1975 would be sought from the Alaska Department of Fish and Game; assessing the impact of such killing since 1975 was difficult since reliable information on total take, age, and sex composition of the kill does not exist; the Service was preparing regulations to initiate its own sealing/marking program; there was no consensus on the magnitude of the recent take, and there was no statistically valid estimate of polar bear populations in Alaska; a computer model was being refined by the Fish and Wildlife Service to utilize available data and those being gathered through the Service's mark/recapture program; it is likely that proportionately as many or more

females have been taken since 1977 than in previous years and this kill could indeed have reduced the population if the take had been sufficiently great; the Service believed that it would be inappropriate to declare a population "depleted" on the basis of pure conjecture; the Service considered the Commission's recommendation "with the implied specific purpose of gathering data to declare polar bears depleted" to be inopportune and inappropriate; Fish and Wildlife personnel would start monitoring polar bear take in the spring of 1980; a prototype contract for this purpose with the Alaska Department of Fish and Game had been developed but had not yet been concluded; and other monitoring contracts might be negotiated for subsequent years.

The Commission responded to the Service by letter of 11 July 1980 indicating that the Service's interpretation of the Commission's recommendation with respect to designating the polar bear population as depleted had been incorrect. The Commission noted that it had asked the Service for its view as to whether or not the population should be designated as "depleted" and had recommended that if the Service did not have the necessary information to make that determination, it establish procedures to monitor the harvest and obtain information concerning the status of the polar bear population. The Commission noted that its recommendation implied no pre-judgment of the status of the polar bear population and it again recommended that the Service establish procedures to monitor the harvest and obtain information needed to determine the status of the polar bear populations. The Commission also requested that the Service provide any available additional information on the sex ratio of animals taken, the taking of females, females with cubs, and cubs, and information on the status of the Service's efforts to develop regulations on marking marine mammals, its harvest monitoring program, its mark/recapture work, and its efforts relating to improving the available data base and the computer model.

The Fish and Wildlife Service responded by letter of 7 October 1980 summarizing the available information and noting that: information on the number, age, sex, and location of bears killed had been requested but not yet received from the State of Alaska; the Service did not have information and therefore could not comment on the sex ratio of animals taken in recent years; the Service accepted the Commission's recommendations that it take the necessary steps to gain the requisite information for determination as to the status of polar bears in Alaska; the Service felt that harvest monitoring warranted high priority; the Service was preparing draft regulations on marking and tagging marine mammal parts; no contract had been signed with the Alaska Department of Fish and Game for monitoring harvests; acceptably reliable estimates of the size of polar bear populations in Alaska were not possible based upon the available information; and the results of current and planned research efforts should enable the Service to develop estimates for the northern and western populations of polar bears and to determine the status of those populations in the future.

The Commission will continue to consult with representatives of the Federal and State agencies as well as other interested groups and individuals during 1981 as part of its continued efforts to resolve the problems described above and facilitate the establishment of an effective marine mammal management program in Alaska.

ATTACHMENT H

Offshore Petroleum Resource Development and Marine Mammals: A Review and Research Recommendations

J. R. GERACI and D. J. St. AUBIN

Introduction

The possible effects of oil and oil-industry activities on marine mammals are a subject of great concern. All marine mammals inhabit surface water to breathe and some to feed, potentially exposing them to spilled oil by contact, inhalation, or ingestion. Nearshore accumulation of oil could directly affect inshore-dwelling cetaceans, manatees, and virtually all pinnipeds and sea otters.

Moreover, all but the manatees are high- or top-level predators, and therefore are potential accumulators of oceanic contaminants. Noise and shock waves generated by seismic surveys, drilling, construction, and support vessels potentially threaten all marine mammals by displacing them from otherwise dependable feeding grounds, migratory routes, and fragile nursing rookeries.

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Despite these concerns, there is little scientific data upon which to base management decisions. There have been two experimental studies on the effects of oil contact on pinnipeds and sea otters, and one on the effects of ingestion on pinnipeds. No study has been conducted on cetaceans. Thus, we continue to use intuition and information from conflicting field observations and imprecise popular news accounts.

There are nine major groups (Trichechidae, Dugongidae, Mysticeti, Odontoceti, Otariidae, Phocidae, Odobenidae, Ursidae, and Mustelidae) and more than 130 different species of marine mammals. It would not be realistic to attempt to assess the effects of oil, noise, etc., on each species or group. Data do not exist nor are they easily acquired. The animals themselves are not well enough understood, their environments and habitats undergo dynamic changes which are likely to affect their exposure to oil, and many of the animals are simply too large or otherwise unsuited for either captive or field studies.

The following research scheme (Fig. 1) is proposed to acquire some of the basic data needed to predict the effects of offshore oil development on marine mammals. It was developed by identifying potential hazards associated with each phase of offshore activity, and then establishing research needs, according to the threats perceived to be most common or most serious to marine mammal populations.

Phases of development are divided into exploration, production, and transportation, each of which has a variety of associated activities. Each activity, either through its very nature or as a result of aberrant function, generates a potential hazard, the effect of which is presumed or has been shown to be detrimental to marine mammals or their environment.

Shock Waves

Effects

Hill[1] has provided an exhaustive review of the effects of underwater

[1]Hill, S. H. 1978. A guide to the effects of underwater shock waves on Arctic marine mammals and fish. Unpubl. manuscr., 50 p. Inst. Ocean Sci., Patricia Bay, Sidney, B.C., Pac. Mar. Sci. Rep. 78-26.

ABSTRACT—*The development of offshore oil and gas reserves presents a number of potential threats to marine mammals. Seismic surveys employing various high explosives can be lethal at close range. Noise is associated with all phases of petroleum exploration and production. The physical, physiological, and behavioral effects of noise disturbance on marine mammals are poorly understood and need to be investigated.*

Exposure to spilled oil has been implicated as the cause of death of pinnipeds and cetaceans, however much of the evidence has been inconclusive. Surface contact is threatening to those species which rely on hair or fur for thermal insulation, such as sea otters, fur seals, and polar bears. Though cetaceans are not likely to accumulate oil on their body surfaces, the unique metabolic and physiologic properties of cetacean skin may be impaired by toxic fractions in crude oil. Marine mammals are unlikely to ingest sufficient quantities of oil to cause acute toxicity. However, the long-term effects of accumulation of petroleum fractions through the food chain are unknown. Inhalation of toxic vapors would occur in any oil spill situation, and can be life threatening in the case of prolonged exposure. The ability of marine mammals to detect and avoid oil slicks is critical to any assessment of the potential impact of oil, and yet such information is clearly lacking.

This review summarizes field observations and experimental studies of the effects of oil and oil exploration on marine mammals, identifies gaps in our knowledge, and establishes priorities for future research.

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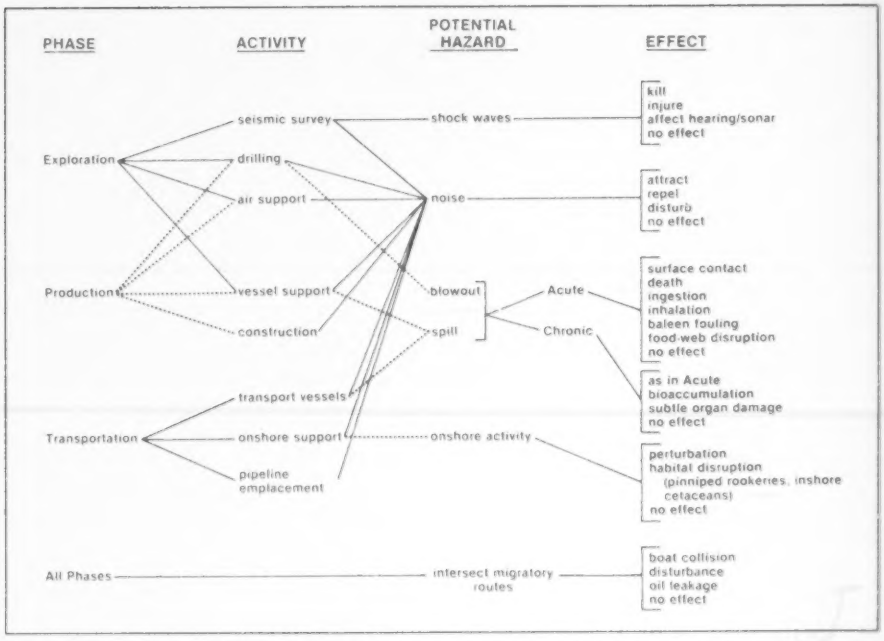

Figure 1.—Proximate factors associated with offshore oil exploration and their effects on marine mammals.

shock waves on fish, and a theoretical account of their possible effects on marine mammals. When seismic surveys are carried out at sea, sources of high-intensity sound, such as explosives and air guns, are placed directly in the water. Detonating-type or "high" explosives have been widely used. These result in a steep-fronted detonation wave which is transformed into a high-intensity pressure wave (shock wave) and an outward flow of energy in the form of water movement. There is an instantaneous rise to maximum pressure followed by an exponential pressure decrease and drop in energy.

Shock wave reflections at an interface between tissue and an air-filled cavity can cause tissue destruction at the interface. Shock waves with high peak pressures and rapid rates of change in pressure can result in damage and death to living organisms. In mammals, gas-containing organs are affected, principally lungs and hollow viscera. Animals close enough to the site of detonation can be killed (Fitch and Young, 1948).

It is possible to calculate lethal range and minimum safe distance from an explosive charge in water. A formula has been developed using fish and land animals as subjects (Yelverton et al., 1973). Its use requires knowledge of target (animal) depth, detonation depth, and charge weight. When applied to a relatively small marine mammal such as a ringed seal, *Phoca hispida*, at a depth of 25 m, minimum safe distance from a 5 kg charge detonated at a depth of 5 m is calculated to be 359 m (Hill, footnote 1). Factors influencing the calculated range include nature of the sea floor, ice cover, and water depth. For example, the calculated safe range is underestimated if the animal is in shallow water with a rocky bottom, or if the charge is detonated under thick ice.

This "safe distance" formula (Yelverton et al., 1973) was derived using relatively small land mammals and fishes as experimental subjects. No marine mammals, or animals approaching their size, have been studied. Nevertheless, Hill (footnote 1) concluded that marine mammals would be less vulnerable to damage from underwater shock waves than are land mammals of comparable size. This primarily is due to pressure adaptations and increased protection due to thick body walls. Morever, they would be further safeguarded by their large size, which in itself protects against underwater blast.

Shock waves from conventional

seismic blasts have been associated with marine mammal mortality. Fitch and Young (1948) reported that California sea lions were killed by underwater explosions used in seismic exploration; gray whales, *Eschrichtius robustus*, in the area were apparently undisturbed. Deaths also occurred in conjunction with an underground nuclear detonation on Amchitka Island in the North Pacific. Ten sea otters, *Enhydra lutris*, and four harbor seals, *P. vitulina*, were recovered dead from the beach nearest the blast site. They were considered to have been killed instantly by an estimated overpressure of 200-300 psi (14-21 bar) followed immediately by underpressure. Death was due to overwhelming destruction of virtually all organ systems (Rausch[2]).

No survey was made of areas more distant from the Amchitka test site, so that a safe distance and pressure were not established. Pressures in the zone in which mortality occurred were at least 50-70 times greater than the safe limit calculated using Yelverton's formula. Such pressures are unrealistically high in terms of those generated during conventional seismic blasting operations.

Air guns also are used in marine seismic exploration. They are placed in arrays of several guns of different sizes, and fired simultaneously. Shock waves so produced differ from those of explosives in that peak pressures are low and both the rise time of the shock pulse and the time-constant of the pressure decay are comparatively long. Shock waves so generated are harmless to fish (Falk and Lawrence[3]; Hill, footnote 1) and would not appear to be immediately injurious to marine mammals.

Recommendations

Studies should be designed to assess physiological, psychological (behavioral), and pathological effects of small graded underwater explosions on representative pinnipeds and small odontocetes, and the data extrapolated to those species or populations which are unsuitable for study, e.g., endangered species, large whales. Experiments should include an evaluation of the startle response, profiles of hearing sensitivity, morphologic assessment of cochlear sensory cells, and detailed examination of all air/tissue interfaces.

In circumstances where explosives must be detonated underwater, the following steps should be taken:

1) Using the formula from Yelverton et al. (1973), calculate the ranges at which various levels of shock wave damage to marine mammals are likely. Data on explosion depth, depth of the animals, and the weight of the charge would be derived from the actual situation at each of the blast sites.

2) Assess behavioral patterns of those species occupying, utilizing, or migrating through potential blast areas. Determine their physical vulnerability using the calculated "safe distance" formula, and behavioral response by using reasoned predictions based on known species behavior and life history.

3) Where marine mammals are considered vulnerably close to blast areas, adopt techniques to reduce potential damage: a) modify charge and arrangement of explosives (Jakosky and Jakosky, 1956); b) detonate small "scaring charge"; c) bury charges in the sea bottom (Hubbs and Rechnitzer, 1952).

Noise

Physiological Effects

Noise is associated with all phases of offshore petroleum exploration and production. It accompanies seismic surveying, drilling, air and ship support, construction, and the operation of onshore and offshore facilities.

Effects of noise on marine mammals have not been investigated. In laboratory animals, auditory damage associated with impulse noise correlates with peak level, duration, rise time, frequency spectrum, background noise level, and number or frequency of repetitions. Noise beyond a definable threshold causes degeneration of cochlear sensory cells with associated loss of hearing. The actual damage is due to the moment of inertia created by the sudden movement of the stapes. The high energy generated brings about acoustic overstimulation and this in turn causes functional sensory cell damage. If the energy is great enough, sensory cells may degenerate and, in the extreme, dislodge from the supporting cells. Such changes are morphologically detectable (Stockwell et al., 1969), but functional correlations are difficult to establish (Henderson et al., 1973).

Most of the studies on noise-associated cochlear damage have utilized high frequency sounds., e.g., ultrasonic radiation. Resulting damage is relatively easy to detect because of the basic architecture and orderly arrangements of cells and membranes in the high frequency region of the cochlea (Ramprashad et al., 1973). However, low frequency sounds of the type which are likely to emanate from activities related to petroleum exploration and production are less destructive than high frequency sounds and their effects are more elusive (Ramprashad[4]). Low frequency sounds are analyzed in the apical portion of the cochlea. This includes a wide area along the length of the basilar membrane, within which specific cell damage is difficult to localize.

The effects of noise on nonauditory physiology of birds and mammals have been reviewed by Fletcher (1971). These appear to be stress-mediated, and involve adrenergic and cholinergic responses, possibly associated with lowered resistance to disease, increased vulnerability to environmental disturbances, and endocrine imbalances which might in turn affect reproduction. Such stress-mediated effects might well apply to marine mammals. Hyponatremia in free-ranging pinnipeds (Geraci

[2]Rausch, R. L. 1973. Post mortem findings in some marine mammals following the Cannikin test on Amchitka Island. Manuscript prepared for U.S. Atomic Energy Commission, Las Vegas, Nev., 86 p.

[3]Falk, M. R., and M. J. Lawrence. 1973. Seismic exploration: its nature and effect on fish. Fish. Mar. Serv., Winnipeg, Tech. Rep. Serv. No. CEN T-73-9, 51 p.

[4]F. G. Ramprashad, Department of Zoology, University of Guelph, Guelph, Ontario. Pers. commun. 1979.

et al., 1979) and adrenal cortical disturbances in odontocetes (Geraci et al.[5]) are conditions which may compromise the normal stress response, making affected animals more vulnerable to noise disturbance.

Behavioral/Psychological Effects

Two types of noise can be identified as potentially affecting marine mammal behavior: Impulse and chronic background noise. Impulse noise elicits a startle reflex, the characteristics of which vary with species, age, sex, and psychological status (Landis and Hunt, 1939; Moyer, 1963; Rylander et al., 1974).

The startle reflex in marine mammals has not been studied per se, but has been described through behavioral observations and anecdotal accounts. In pinnipeds, sudden disturbances cause dispersement from rookeries, often taking the form of a spontaneous mass movement, or stampede, into the water (Loughrey, 1959; Salter, 1979). This, in turn, may lead to disruption of mother-pup pair bonds and accidental injuring or killing of pups. Recolonization of the rookery may then be associated with injurious territorial aggression.

Moreover, repeated disturbances may lead to colonial pinnipeds abandoning traditional breeding areas in favor of less suitable sites. For example, underwater vocalizations of harp seals in whelping areas decreased sharply following the arrival of a vessel, but it could not be determined whether this was due to a change in behavior, or a shift in location (Terhune et al., 1979). Under most circumstances, it would seem that pinnipeds most vulnerable to the effects of noise disturbance might be perinatal females and nursing pups and calves, molting animals, and those stressed by parasitism and disease (Geraci and Smith, 1976a).

Some cetaceans respond to sudden disturbances by sounding, aggregating, or dispersing, and subsequent regrouping of the social structure (Leatherwood[6]). This is particularly true of the more gregarious odontocetes. These behaviors are adaptive and obviously designed to protect against a sudden threat. However, in some cases they may be detrimental. Some of the hypotheses used to explain mass strandings of cetaceans include acoustical confusion (Dudok van Heel, 1966), meteorological conditions (Hall et al., 1971; Stephenson, 1975), and unusual disturbances. For example, van Bree and Kristensen (1974) attributed a small mass stranding of Cuvier's beaked whales, *Ziphius cavirostris*, in the Caribbean to an underwater explosion.

Unlike the abrupt response to a sudden disturbance, most animals become habituated to low-level background noise such as would be associated with ship traffic and onshore and offshore petroleum activities. Some species with which we are familiar, e.g., humpback and gray whales, harbor and elephant seals, bottlenosed dolphins, walruses, and sea lions, seem to coexist well with human activities. Such habituation, in fact, forms the underlying basis for the success of whale watching cruises. Nevertheless, Nishiwaki and Sasao (1977) have suggested that increased ship traffic in Japanese waters had disturbed migration routes of minke whales, *Balaenoptera acutorostrata*, and Baird's beaked whales, *Berardius bairdi*.

Although the effects of noise as it might relate to oil activities are not known, the net result of any disturbance would depend upon the size and percentage of the population likely to be affected (e.g., 100 fur seals in Alaskan waters vs. 100 manatees in Florida), the ecological importance of the disturbed area (e.g., critical habitat), and the environmental and biological parameters which influence an animal's sensitivity to disturbance and stress. An additional factor which must be taken into account is the rate of recovery or recolonization by a population following a short-term disturbance, or the accommodation time in response to a prolonged disturbance.

Recommendations

Studies on the effects of noise on marine mammals must address both first and second level effects. First level effects, such as auditory damage caused by impulse noise may have an immediate impact. In this context, the question must be answered as to the effects of acoustic overstimulation on the bone conducting auditory system of pinnipeds (Ramprashad et al., 1973) and cetaceans (McCormick et al., 1970).

Marine mammals have specialized anatomical features such as distensible venous retia, dense auditory bones, a thick tympanic membrane, and a reduced ear canal (cetaceans) or one that is under voluntary control (pinnipeds). These adaptations serve to dampen the movement of the ossicular chain (McCormick et al., 1970; Ramprashad et al., 1973), particularly during diving. A study of noise effects should compare in-air and underwater audiograms of animals exposed to high intensity, variable frequency pure-tone sound (Terhune and Ronald, 1972), in order to determine any changes in hearing threshold attributed to sensory cell destruction. Precise site of damage may be confirmed histologically. These data can then be used to assess the physical-pathological impact of the noises likely to emanate from each phase of industry operation.

Most marine mammals use sound as a form of communication, or for navigation and locating prey species. Background noise may interfere with these sounds, thereby resulting in second level effects, such as social disruption and echo confusion. The immediate effects can and should be tested experimentally. However, the long-term effects can only be assessed by observation under field conditions, and might be expected to include population decline through stress-mediated disease, decreased productivity, and displacement from favorable habitats. These

[5]Geraci, J. R., S. A. Testaverde, D. St. Aubin, and T. Loop. 1976. A mass stranding of the Atlantic white-sided dolphin, Lagenorhynchus acutus: a study into pathobiology and life history. Natl. Tech. Inf. Serv., Wash., D.C., PB-289 361, 141 p.

[6]Leatherwood, S. 1977. Some preliminary impressions on the numbers and social behavior of free-swimming bottlenosed dolphin calves *Tursiops truncatus* in the northern Gulf of Mexico. *In* S. H. Ridgway and K. Benirschke (editors), Breeding dolphins, present status, suggestions for the future. Natl. Tech. Inf. Serv., Wash., D.C., PB-273 673, 29 p.

questions can best be addressed by collecting baseline behavioral and population data for a few selected species and test areas, then carefully monitoring these during all phases of oil exploration and development.

Boat Collision

Accidents associated with industrial activities can be minimized but not eliminated. Oil exploration in the regions of the outer shelf will be accompanied by ship traffic through migratory routes, and low flying aircraft in the area of the drilling platform. It should be possible to minimize disturbance to marine mammals by strategically locating onshore facilities, and by carefully planning flight paths and supply ship routes. Certain problem areas have already been identified, such as inshore and coastal Florida waters which require special consideration in order to reduce manatee mortality resulting from boat collisions, gray whale calving lagoons in Baja California, and other areas of marine mammal concentrations.

Oil

Background

Over the past 10 years, reports by the media and some scientific review articles have implicated oil fouling as the cause of death of seals, sea otters, and both small and large whales. The most noteworthy incident is that of the 1969 blowout in the Santa Barbara Channel. Accounts of the incident speculated that gray whales had died as a result of the spill. Time[7] reported the presence of a stranded dolphin with an oil-clogged blowhole and lung hemorrhage. Similar accounts involved northern elephant seals, *Mirounga angustirostris*, California sea lions, *Zalophus californianus*, and the northern fur seal, *Callorhinus ursinus*. Critical assessments of the spill did not conclusively link the marine mammal deaths with the presence of oil (Simpson and Gilmartin, 1970; Brownell, 1971; Brownell and Le Boeuf, 1971; Le Boeuf, 1971).

[7]Time, 21 February 1968, p. 21.

Reports on seals contaminated in other oil spill situations are vague. There have been two events in Alaskan coastal waters in which marine mammals, mostly hair seals (Phocidae), but including sea lions and sea otters, *E. lutris*, came into contact with oil (Anonymous, 1971a, b). No mortalities were reported in the immediate vicinity at the time of the spills. In one instance, seal hunters later observed 55 "seals" with oil-contaminated pelts, and one dead sea otter coated with oil. Associated with the second spill, "Two killer whales, one sick and one dead, were observed. Four hundred hair seals... were acting in an unusual way and had a white glazed look in their eyes.... It was not known whether the deaths of a small number of sea otters were related to the contaminant. There were no deaths among the 400 hair seals that appeared to have been affected by the contaminant but they continued to behave strangely (would not enter the water)" (Anonymous, 1971b).

During the 1967 *Torrey Canyon* spill, some seals were reported to be surfacing through oil slicks; others were found dead coated with oil (Spooner, 1967). However, precise causal relationships were not established.

Following the *Arrow* spill in 1969 at Chedabucto Bay, Nova Scotia, a small number of seals reportedly died due to suffocation caused by the plugging of vital orifices with Bunker "C", a highly viscous, refined oil (Canada Ministry of Transport, 1970). Details of these observations are not available and so the account cannot be assessed critically. In another report of a Bunker "C" spill in the Gulf of St. Lawrence, 500-2,000 harp seals, *P. groenlandica*, were observed coated with oil. Some dead seals were found but it could not be determined whether oil was the causal agent (Warner[8]).

Davis and Anderson (1976) studied differences between oiled and uncontaminated gray seals, *Halichoerus grypus*, off the west coast of Wales following an oil spill of undetermined origin. Of 25 oiled pups examined, 5 (20 percent) were dead on the beach, compared with 11 of 37 unoiled pups (30 percent). Six of the dead oiled pups submitted for postmortem examination showed no evidence of having ingested oil, supporting the investigators' conclusion that "...oiling was not a direct cause of death. ... The only deaths which could be attributed directly to oil, were those of two pups, encased in oil so that they were unable to swim and thus were drowned when washed off the beach."

As recently as April 1979, following the breakup of the tanker *Kurdestan* off the south coast of Nova Scotia, as many as 14 dead and dying phocid seals (species unidentified) were observed coated with Bunker "C" oil, which was also found fouling the shoreline (Marston[9]). Detailed necropsies were not performed and, once again, the association of oil with mortality is unsubstantiated.

Oil Detection and Avoidance

Marine mammals may or may not be able to detect oil, and if so, avoid it. Yet such behavioral response is the heart of the issue. The preceding scenarios, which are by no means conclusive, show that in some cases pinnipeds and sea otters do not avoid oil whereas a cetacean has yet to be found coated with oil. The difference may be due to sensory capabilities which are more sophisticated at long range in odontocetes (Norris, 1969), perhaps enabling them to detect oil more readily. Alternately, cetacean skin is smooth and cannot accumulate oil, and unlike pinnipeds which come ashore with obvious evidence of oil, an oil-fouled odontocete may go unnoticed. In support of the latter, mysticetes have no known sonar capability (Eberhardt and Evans, 1962; Beamish, 1977), and yet have not been observed with any evidence of oil fouling.

Certain features of pinniped and sea

[8]Warner, R. E. 1969. Environmental effects of oil pollution in Canada. An evaluation of problems and research needs. Can. Wildl. Serv. Manuscr. Rep., p. 16-17.

[9]D. F. Marston, Nova Scotia Society for the Prevention of Cruelty to Animals, Halifax, Nova Scotia, Pers. commun. 1979.

otter life history may increase their vulnerability to oil. During pupping, moulting, and mating activities, their dependency on substrate may force them into repeated exposure to shoreline accumulations of oil (Davis and Anderson, 1976), despite some evidence that they are able to detect it. For example, Barabash-Nikiforov et al. (1947) reported that Japanese poachers used petroleum products to repel otters from shore rocks. The repellant effect was presumably due to repugnant petroleum odors.

Laboratory studies have not helped to resolve the question, nor can they go further than simply establishing detection capability. In the only such study to date, Williams[10] concluded that sea otters would not avoid an oil spill, but he could not determine whether the stresses of captivity and confinement were responsible for the behavior.

It is conceivable that some marine mammals may even be attracted to a spill to feed on fish and other organisms debilitated or killed by the oil. Beck (in Hill, footnote 1) observed a gray seal, *H. grypus*, feeding on injured fish in the vicinity of a shipwreck where large underwater charges were being detonated.

Recommendations

Studies should be designed to assess behavioral responses to oil. Can marine mammals detect oil? What are the sonar-echo characteristics of oil on the surface and in the water column? What is the visual response to oil? What are the limits of detection? What is the olfactory response to oil by various species? Is oiled food palatable?

Many of these questions regarding sensory perception can best be approached by experimentation under controlled laboratory conditions. However, these data must be integrated with observational data acquired during actual oil spill situations. Such events not only provide a basis for assessing the relevance of in vitro and laboratory or captivity studies, but also represent situations which cannot be experimentally duplicated.

To maximize the information yield from an otherwise disruptive ecological event, an observer team response should be organized specifically to investigate the impact of accidentally occurring oil spills, recording such factors as dispersal of oil through specific marine mammal habitat areas, e.g., rookeries, breeding or calving lagoons, as well as avoidance, feeding, reproduction, migration, and hauling-out behavior.

Behavioral Effects

The behavioral consequences of oil fouling have been noted only for pinnipeds. Kooyman et al.[11] attempted unsuccessfully to determine diving and feeding behavior in oil-fouled northern fur seals. Davis and Anderson (1976) noted reduced growth rate in oiled gray seal pups, but could not determine changes in nursing behavior as a result of oiling. Experimentally oiled sea otters spent "75% of their time underwater trying to clean their pelage" (Williams, footnote 10). Ringed seals immersed in seawater covered with light crude oil showed variable signs of irritability and increased aggression (Geraci and Smith, 1976b). When on the surface, the seals showed varying degrees of arching of the back, a behavior that was not observed in the control group or in the experimental group prior to oiling. Four days after being removed from the 24-hour oil exposure, the seals showed no behavioral or physical signs of having been oiled.

Recommendations

Critical gaps exist in our knowledge of the behavioral effects of oil fouling, and yet behavioral modifications as a result of oil contact may represent a significant impact on marine mammal populations. Changes in activities such as feeding, diving ability, mother-pup interaction, herd organization, and haul-out behavior may have immediate consequences affecting the survival of oil-fouled animals. Behavioral observations at the site of an oil spill are needed, therefore, to properly assess the effects of oil. For many species, such data are not easily interpreted due to the lack of baseline behavioral studies. Nevertheless, an accidental oil spill presents an opportunity for observations which for the most part cannot be duplicated under laboratory or captive conditions, and data so collected will be available for retrospective analysis following cleanup and restoration of the oil-fouled area.

Thermal Effects

Recent experiments have addressed some potential oil effects on thermoregulation in pinnipeds and sea otters. Kooyman et al. (1977, footnote 11) investigated the effects of oiling on thermal conductance of pelts from sea otters and four species of otariid and phocid seals. Most affected were pelts from a sea otter pup and two subadult northern fur seals in which conductance doubled. No change was noted in a California sea lion, and bearded seal, *Erignathus barbatus*, pelts. An oiled Weddell seal, *Leptonychotes weddelli*, pelt showed an intermediate increase in conductance. Control values for phocid seal and sea lion skins were high. The investigators concluded that fouling of fur in sea otters and fur seals would have serious consequences and, if the insulative properties of the pelts were not restored through grooming, these species probably could not endure prolonged immersion in cold water.

In an unrelated and less convincing study, two sea otters were placed in a holding pen in which Alaska crude oil covered one-half of the surface (Williams, footnote 10). One otter was removed to a clean holding pen, and was found dead 9 hours later. Williams (footnote 10) speculated that the animal had died of hypothermia. His conclusion is not supported by physiological or pathological data, but seems reasonable based on the Kooyman et al. (1977, footnote 11) studies.

[10]Williams, T. D. 1978. Chemical immobilization, baseline hematological parameters and oil contamination in the sea otter. U.S. Marine Mammal Commission Report MMC-77/06, 27 p. Natl. Tech. Inf. Serv., Springfield, Va.

[11]Kooyman, G. L., R. L. Gentry, and W. B. McAllister. 1976. Physiological impact of oil on pinnipeds. Processed rep., 23 p. Northwest Fisheries Center, Natl. Mar. Fish. Serv., NOAA, Seattle, Wash.

Studies were conducted on ringed seals, *P. hispida*, immersed in seawater covered with light crude oil for 24 hours and on newly weaned harp seal pups, *P. groenlandica*, coated with crude oil for 7 days (Smith and Geraci, 1975). In all cases, body temperatures remained stable within the normal range. In vitro examination of the pelts from these studies showed that thermal conductance was not changed as a result of oil. The major effect on the fur was to increase solar heating capacity.

Recommendations

All evidence indicates that animals which rely on hair or fur for thermal insulation will be adversely affected by surface contact with oil. By experimentation and extrapolation, we may consider sea otters, fur seals, and polar bears in this category. Phocid seals are more resistant to the thermal effects of oil, likely due to their reliance on blubber and vascular mechanisms for thermal insulation. Cetaceans would be similarly resistant to mechanical interference with thermoregulation, particularly because the smooth body surface would substantially reduce the likelihood of physical fouling by even the heavier adhesive fractions. Further studies on thermal effects of surface fouling should therefore be afforded low priority.

A study directed toward testing various solvent-emulsifiers which might be used to clean oiled marine mammals would also be considered low priority. Application of such techniques in the field are impractical, not likely to reduce mortality significantly, and in fact may be detrimental as a result of excessive handling (Davis and Anderson, 1976) or interference with natural oils on the fur (Williams, footnote 10).

Noxious Effects

Some anticipated effects of surface contact with oil are irritation and inflammation of eyes, skin, and sensitive mucous membranes. The nature of the damage has been adequately demonstrated in ringed seals immersed in oil-covered seawater (Geraci and Smith, 1976b). Seven or eight minutes after oiling, one of the seals began to lacrimate excessively, and would frequently open and close its eyes. Soon eye irritation became apparent in the other seals. They lacrimated profusely, yet at first there was no attempt to close their eyes to avoid the oil. Twenty minutes into the study, however, some of the seals seemed to have difficulty keeping their eyes open; the conjuctiva of the eyes were obviously reddened and inflamed. Within 4 hours, all of the seals were lacrimating and squinting.

After 24 hours of exposure, examination of the eyes revealed severe conjunctivitis, swollen nictitating membranes, and evidence of corneal erosions and ulcers. Within 3 hours of being placed in a clean seawater pen, most of the eye squinting and lacrimation had subsided, and by 20 hours, the eyes showed no signs of irritation.

There were no other surface effects noted in the immersed seals, nor have skin lesions been unequivocally linked with accidental or experimental exposure to oil. Although oil-fouled cetaceans have not been observed, the nature of their skins suggests that they may be particularly vulnerable to the noxious effects of surface contact with oil.

Cetacean epidermis is a unique organ, having no counterpart in other mammals (Ling, 1974). The outermost layer is not keratinized, but consists of flattened viable cells with elongated nuclei and prominent organelles, including mitochondria. The epidermal cells are rich in enzymes creatine kinase, sorbitol dehydrogenase, and aspartate aminotransferase (Geraci and St. Aubin, 1979). These enzymes are respectively involved with high energy phosphate conversion, hexose metabolism, and transamination of amino acids. Cetacean epidermis is also rich in vitamin C (St. Aubin and Geraci, in press), the antioxidant properties of which may serve to protect the enzymatically active intracellular environment.

These findings support other biochemical evidence of high metabolic activity (Tinyakov et al., 1973; Dargoltz et al., 1978) but as yet the reason or reasons for this activity is not understood. Nevertheless, physical or chemical disruption might be expected to have immediate and far-reaching metabolic consequences, perhaps affecting vital ionic regulation and water balance. Cetacean skin is virtually unshielded from the environment, and it may respond to noxious substances such as oil in a manner approaching sensitive mucous membranes.

Recommendations

The irritating properties of oil on the ocular and periocular tissues were well documented in the ringed seal immersion experiment (Geraci and Smith, 1976b). By reasoned interpretation, we can predict that petroleum hydrocarbons will be similarly harmful to other marine mammal species. As such, a study to quantify ocular damage as a result of oil contact would appear unnecessary.

Experiments to determine the noxious effects of oil contact on cetacean skin should be given high priority. The morphologic and metabolic nature of cetacean epidermis demands that biochemical and physiological studies rather than physical-thermal studies be carried out to assess the effects of oil contact. Such studies should also include an assessment of the effects of dispersant-treated oils, as these will likely be contacted by marine mammals during oil clean-up operations.

Ingestion and Accumulation

Marine mammals exposed to a spill may ingest and accumulate oil. Ingestion might occur incidental to surface activities, in association with surface feeding in the case of large whales, or with grooming in sea otters. A less direct route of accumulation might be through feeding on contaminated prey species.

It is also conceivable that ingested oil could foul baleen plates. Crude oils are complex mixtures of hydrocarbons. Lighter fractions evaporate quickly, so that crude oil density and viscosity increase with weathering. The heavier weathered fractions, as well as heavy refined products such as Bunker "C", presumably would present the most serious threat with regard to possible baleen fouling in surface feeding whales. The threat probably would di-

minish dramatically with time as the oils disperse. Raw crude oil or lighter oil fractions might have quite a different effect. Although they may have less fouling potential, they are volatile and destructive to tissue, and might thereby damage the structural integrity of the baleen plates or horny tubes that compose the food-filtration mechanism.

Ingested oil is potentially toxic. Acute cytotoxic damage, associated with low molecular weight volatile fractions, has been observed in most animal species which have been studied, while more subtle organ damage may be associated with repreated ingestion of less volatile fractions (Moore and Dwyer, 1974).

In testing acute toxicity of ingested oil to marine mammals, Geraci and Smith (1976a) performed a series of experiments on phocid seals. They found that ringed seals rapidly absorbed crude oil hydrocarbons into body tissues and fluids, ultimately excreting the compounds via bile and urine (Engelhardt et al., 1977). Harp seals given up to 75 ml of crude oil, far in excess of that calculated to have been swallowed by the ringed seals immersed in oil-covered water for 24 hours, showed no clinical, biochemical, or morphological evidence of tissue damage (Geraci and Smith, 1976a).

Thus, relatively large quantities of oil accidentally ingested over a short period of time were not associated with acute organ damage. These findings cannot be extrapolated to greater quantities of oil or to other groups of marine mammals. Yet the findings from these studies tend to dampen the fear that accidental oil ingestion associated with feeding would be necessarily harmful to carnivorous marine mammals. Sirenia, on the other hand, might respond quite differently. They are herbivores, and ingestion of oil-contaminated food might be expected to harm the gut flora or interfere with secretory activity of the gastric glands (Kenchington, 1972), thus affecting digestion and perhaps survival.

Any study on oil ingestion must address long-term effects associated with fractions persistent in the food chain. Benthic invertebrates accumulate aromatic hydrocarbons in varying degrees, both from seawater (Stegeman and Teal, 1973), and from bottom sediments (Roesijadi et al., 1978). In the soft-shell clam, *Mya arenaria*, maximum tissue levels are attained within 1 week (Stainken, 1978). In another deposit-feeding clam, *Macoma inguinata*, and the suspension feeding clam, *Protothaca staminea*, hydrocarbon concentrations continue to increase with exposure (Roesijadi et al., 1978).

Generally deposit feeders accumulate hydrocarbons to a greater extent than suspension feeders. Representatives of this group compose a significant portion of the walrus diet (Vibe, 1950). For this reason walruses would seem to provide a natural field model for determining effects of long-term hydrocarbon accumulation.

Levels of hydrocarbons in benthic organisms vary due to animal species, nature of the substrate, and hydrological conditions. In seven benthic invertebrates representing five phyla, hydrocarbon levels decreased after initial exposure to contaminated sediments (Grahl-Nielson et al., 1978). Yet in the case of the Chedabucto Bay oil spill off Nova Scotia, hydrocarbon levels in the soft-shell clam, *M. arenaria*, were found to exceed 200 μg/g, 6 years after the event (Gilfillan and Vandermeulen, 1978). These high tissue concentrations correlated with persistent high hydrocarbon levels in the sediment. This raises the interesting question of the possible effects that pipeline and platform construction, or other forms of physical disturbance might have on resuspending contaminated sediments, thus making them more available to benthic invertebrates and fish in critical feeding grounds for bottom feeders such as walruses, sea otters, and bearded seals.

Persistence of hydrocarbons in at least some mollusks is due to their apparent lack of the degrading enzyme aryl hydrocarbon hydroxylase (Vandermeulen and Penrose, 1978). Fish have this enzyme, and within 2 months of exposure, metabolize 98 percent of the accumulated hydrocarbon load, retaining naphthalenes and tetramethylbenzene (McCain et al., 1978), the components ultimately transferred to top level predators.

The long-term effects of ingestion of these compounds by marine mammals are unknown, but Hodgins et al. (1977), in their review of the literature, provided unequivocal evidence that certain petroleum hydrocarbons, such as benzopyrene, are potent carcinogens in a wide variety of invertebrate and vertebrate species. Although marine mammals would likely suffer the same consequences, the issue is rather academic, as any experiment designed to test the hypothesis would draw upon unrealistic circumstances of selective feeding on specific carcinogenic fractions.

More realistic, and perhaps more important to population health and stability, are the subtle and elusive effects of functional impairment of those organ systems which can be evaluated only with time, e.g., the central nervous and reproductive systems. In an historical analysis of cetacean strandings on the coast of the Netherlands, van Bree (1977) has associated two periods of sudden decline in the number of strandings to an increase in pollutant levels in the North Sea. He reported that, "The first probably took place around 1946" and there is a "...possibility that this... is linked to the dumping of war chemicals at that period or by the increase in the use of oil....[the] second decrease is clearly related to the increase of pollution of the North Sea...."

The conclusion is intriguing, and though still subject to discussion, it draws on 45 years of carefully documented observations on the frequency of strandings. If true, then it calls attention to the reason or reasons underlying the population decline, and the possible role of pollutants, including petroleum hydrocarbons, on reproductive success.

Helle et al. (1976) found that about 40 percent of a sample of Baltic ringed seal females of reproductive age showed pathological changes in the uterus, associated with unusually high levels of DDT and PCB substances. Premature parturition in California sea lions has been correlated with high tissue levels of DDT and PCB's, in association with disease agents and trace element imbal-

ances (Gilmartin et al., 1976). Data on tissue hydrocarbon burdens in free-ranging marine mammals, such as would be required to realistically interpret these findings, are not presently available.

Recommendations

Laboratory experiments should be conducted to determine the fouling properties of various crude oil fractions on baleen. These studies must address factors such as filtration rate and efficiency, structural integrity of baleen plates, and recovery time. Interpretation of the findings is complicated by a general lack of understanding of the mechanisms and characteristics of baleen feeding, but until such data are available, we must rely on extrapolation from in vitro studies. Insight into the potential problem of baleen fouling would be significantly enhanced by observations and sample collection from dead mysticetes, stranded or floating near the site of an oil spill.

Limited studies of the acute effects of ingested oil on predatory marine mammals have been done. Geraci and Smith (1976a) demonstrated that consumption of a substantial quantity of oil had no observable harmful effect on harp seals although pathological changes could no doubt have been induced by increasing the dose. In an equivalent experiment which did produce pathological changes, 10 liters of a light Texas crude oil were administered to bovine calves the same size as an adult *Tursiops* (Rowe et al., 1973). Although it would seem inappropriate to repeat this study on larger pinnipeds or cetaceans, stomach contents and tissue burdens of dead or moribund animals in the area of spills should be examined as a matter of course.

Sirenians, though conceivably more vulnerable to acute effects of oil ingestion, are unsuitable for experimentation by virtue of their reduced numbers. Dead and debilitated manatees recovered from the Florida canal systems should be utilized for studies of tissue hydrocarbons, and for in vitro effects of petroleum hydrocarbons on gastrointestinal flora and digestive enzymes.

Although ingestion studies are not required, there is a need to determine the potential for bioaccumulation of petroleum hydrocarbons in marine mammals. The problem can be attacked from another direction: By assessing the functional capacity of enzyme systems to metabolize hydrocarbons, and by analyzing for the presence of hydrocarbons and metabolites in marine mammals known or suspected to have come into contact with oil.

Studies should also be directed toward assessing the effects of long-term ingestion and accumulation of oil fractions, particularly those transferred through the food chain. Baseline data on the type and concentration of hydrocarbons in food organisms are available, and could be used for preliminary studies on conventional laboratory animals. Such experiments could not feasibly be carried out on marine mammals, due to the numbers of animals which would be required to obtain statistically meaningful data for a variety of compounds and doses.

The long-term effects of persistent hydrocarbons on marine mammal organ systems can only be addressed through continued surveillance of free-ranging animals, particularly stranded specimens. Through a monitoring program, it may be possible to relate functional or behavioral changes in marine mammals to tissue and environmental levels of hydrocarbons, such as have already been described for certain other pollutants (Gilmartin et al., 1976; Helle et al., 1976; van Bree, 1977).

Inhalation

Studies on ringed seals showed that during the 24-hour immersion in oil-covered water, some volatile hydrocarbons were likely absorbed through the respiratory tract (Geraci and Smith, 1976a). That is, tissue hydrocarbon concentrations were higher than could be accounted for by the imperceptible quantities calculated to have been swallowed (Engelhardt et al., 1977). Transient kidney and possible liver lesions were observed, but there was no associated lung pathology. The experimental setting within the confined holding pen (Smith and Geraci, 1975) provided a more concentrated exposure to volatile fractions than would normally be encountered in an oceanic spill. Thus, short-term inhalation is not necessarily harmful either in terms of structural damage or gas exchange.

Effects of prolonged inhalation have not been examined in marine mammals. However, it is likely to have the same consequences as have been observed in rats, i.e., central nervous system disturbance, bronchopneumonia, and death (Carpenter et al., 1978). Such prolonged inhalation will feature prominently in a major spill or in one in which animals tend to remain.

Some concern has been expressed over the possibility of oil clogging the cetacean blowhole. This seems unlikely as the typical breathing cycle of cetaceans involves an explosive exhalation followed by an immediate inspiration and abrupt closure of the muscular plug. This mechanism has evolved to prevent inhalation of water and would be as discriminatory of oil.

Recommendations

Experiments specifically directed at assessing inhalation effects would not yield more than can be deduced from a reasoned interpretation of existing literature on oil properties, oil effects, and marine mammal biology. Notably, the net effects of inhaled vapors will depend on the composition of oil; duration of exposure; environmental conditions affecting evaporation, dissolution, and dissipation (Cretney et al., 1978; Moore and Dwyer, 1974); and the health of the animal. It is reasonable to expect that prolonged exposure to petroleum vapors, particularly highly volative fractions, can be life threatening.

Oil Countermeasures

Oil cleaning operations are associated with unprecedented human activity, and aerial and ship traffic. Case studies of the Santa Barbara blowout and spills of the *Torrey Canyon*, the oil barge *Florida* in Buzzards Bay, Mass., *Arrow* in Chedabucto Bay, Nova Scotia, and *Argo Merchant* in Nantucket shoals show that clean-up operations are justified on the basis of the importance of coastal recreational amenities and potential damage to the fish and

shellfish industry. The mechanics of such operations at present involve activities that may have greater impacts on marine mammals than oil itself.

For example, the *Torrey Canyon* clean-up involved an initial bombing with 160,000 pounds of high explosives, 10,000 gallons of aviation kerosene, 3,000 gallons of napalm, and rockets. Subsequently, 2.5 million gallons of eight different solvent emulsifiers were used. Shore operations included burning with flamethrowers, magnesium powder, and high-temperature flares, and physical removal with the aid of heavy equipment, booms, suction devices, straw, and other absorbent material, and steam cleaning (Gill et al., 1967; Butler et al.[12]). More recent operations have been somewhat less rigorous.

Recommendations

Oil countermeasures should be dictated to some extent by the presence or proximity of marine animals. This is particularly true of areas surrounding pinniped rookeries, such as the Leeward Islands in the Hawaiian chain (monk seals) and Sable Island in the North Atlantic (gray and harbor seals), the sea otter range in California, the manatee range in Florida, and open leads occupied by migrating belugas, *Delphinapterus leucas*, and bowhead whales, *Balaena mysticetus*.

Oil countermeasures should consider the effects of solvent-emulsifiers, which may be more harmful to marine mammals than exposure to oil alone (Davis and Anderson, 1976; Williams, footnote 10). Studies should be undertaken to determine the effects of surface contact of oil/solvent-emulsifier mixtures, particularly on cetaceans.

Indirect Effects

The most noteworthy finding from the phocid seal studies was that captive ringed seals immersed in light crude oil-covered water, under similar conditions as had been carried out in the field, died within 71 minutes (Geraci and Smith, 1976a). The investigators concluded that the marked difference in results was due to the added stress of captivity in the second experiment, and that oil or another environmental stressor may have a selective effect on stressed or otherwise weakened members of a population.

In this context, marine mammals might be more vulnerable to the effects of oil when naturally stressed during moult, reproduction, times of low food availability, or when weakened by parasites and disease. For example, the effects of inhalation may be particularly harmful to inshore dwelling harbor porpoises, *Phocoena phocoena*, and harbor seals, *Phoca vitulina*, infected with debilitating lungworms and heartworms (Geraci[13]). Also vulnerable would be moulting pinnipeds in a fasting state, and cetaceans whose excursions into low salinity environments may lead to an exaggerated skin response (Harrison and Thurley, 1974).

The ultimate effects of oil will depend on the interaction of physical factors such as location, season, and weather and water conditions with biological variables associated with life history and individual and species responses to oil. Physical factors can be defined, predicted, and controlled to some extent; the biological variables are more elusive, and must be clarified through research.

A Monitoring Program

The nature and direction of research on oil effects ultimately will be influenced by field observations at the site of oil spills or blowouts. The question of detection and avoidance/attraction is critical to an understanding of potential oil impact, yet there are presently no data available on which to base management decisions. For most species, such data can only be gathered through detailed investigation of oil spill situations. Regional response teams having expertise in marine mammal behavior, ecology, and pathology should be organized to participate in oil spill task forces, and assess the impact of all phases of cleanup and recovery on marine animals.

A monitoring program should be extended to include investigation of critical habitats in advance of any oil or gas related activities. Population surveys and behavioral observations are necessary in many areas where baseline data are lacking. Interpretation of future oil impacts may be hampered by the absence of such information. Careful and consistent documentation of marine mammal strandings, with emphasis on frequency, location, and pathology, will also be critical to a proper assessment of oil-related mortality.

Background data on tissue hydrocarbon levels can be obtained from stranded animals or any marine mammals taken as part of, or incidental to, commercial fishery operations (e.g., porpoise-tuna, harp seals, northern fur seals, mysticetes trapped in fishing weirs). Pathological and toxicological findings in marine mammals recovered in or near an oil spill or from chronically polluted waters could then be more meaningfully interpreted. This approach may be the only alternative which will provide data on the effects of long-term bioaccumulation of petroleum hydrocarbons.

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ATTACHMENT I

United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

In Reply Refer To:
FWS/OES BLM/GS 80-1

SEP 18 1980

Memorandum

To: Director, Bureau of Land Management
Director, U.S. Geological Survey

From: Director, U.S. Fish and Wildlife Service

Subject: Biological Opinion Regarding Outer Continental Shelf Leasing and Exploration Offshore Central and Northern California

A consultation under Section 7 of the Endangered Species Act (ESA) of 1973, as amended, was formally requested by the Bureau of Land Management (BLM) and the U.S. Geological Survey (GS) on April 17, 1980. This consultation was to include all the activities pertaining to the Outer Continental Shelf (OCS) oil and gas leasing and exploration activities in the area of California from Point Conception, Santa Barbara County, north to the California/Oregon border.

Project Description

The subject proposal provides for the lease sale and exploration of select submerged Federal lands offshore central and northern California between Point Conception, Santa Barbara County, and the California/Oregon border. The proposed sale includes 243 tracts (each tract is about 5,400 acres) comprising approximately 1.316 million acres of the outer contintental shelf. The tracts are further grouped into five subareas. (See the attached Figure IV A.1-1 from the BLM Draft Environmental Impact Statement (DEIS), following page 8.)

The Bel River subarea is located offshore the town of Eureka, Humboldt County, and comprises 30 tracts. The Point Arena subarea also contains 30 tracts and is located offshore the town of Mendocino, Mendocino County. The Bodega subarea located off the coast of Bodega Bay, Sonoma and Marin Counties, contains eight tracts. Sixty tracts comprise the Santa Cruz subarea which is located west of the cities of Santa Cruz and San Francisco, mainly off Santa Cruz County. The largest subarea, Santa Maria, totalling 115 tracts, is located offshore between Morro Bay and Point Conception, San Luis Obispo and Santa Barbara Counties. The tracts range seaward from 3 miles to as far as 27 miles, and lie in water depth ranging from 162 to 2,437 feet.

This consultation considered the proposed sale (Sale No. 53) of the five subareas by the BLM to private oil and gas interests, and subsequent exploration for hydrocarbons by lessees on these tracts. The proposed sale is to take place in May 1981, followed by an exploration phase, with further decisions being made which could authorize production starting in 1986 and continuing to 2005.

During the exploration phase, essentially no additional support facilities beyond those existing will be required. Drilling will probably involve floating drill vessels rather than permanent drill platforms.

Following are four alternatives to the sale of tracts as proposed, that have been analyzed by the BLM (DEIS, 1980):

1. Delete part of the Santa Cruz and Santa Maria subareas to establish a 6-mile buffer zone adjacent to the coast rather than a 3-mile zone as in the original plan. This alternative would have the effect of reducing air quality impacts and the impact of possible oil spills on benthic, intertidal, and estuarine organisms by increasing the time required for oil to reach shore areas, and therefore, more time for oil dissipation and clean up.

2. Delete tracts from the northern end of the Santa Maria subarea that are closest to the range of the sea otter. The primary objective is to enhance protection of the sea otter by considerably reducing the risk of an oil spill reaching sea otter range.

3. No sale alternative. All activities anticipated under the proposed action would not occur.

4. Delay the sale for a variable period of time to allow the acquisition of additional environmental information, and the possible development of technological innovations that might alleviate environmental impacts resulting from eventual sale of the tracts.

This Section 7 consultation included all leasing and exploration activities relative to the proposed OCS Sale No. 53 as described in the DEIS, Proposed 1981 Outer Continental Shelf Oil and Gas Lease Sale Offshore Central and Northern California, April, 1980. In addition to the direct effects of these activities, the consultation must also consider the indirect effects along with actions that are interrelated or interdependent with the proposed activity or program; that is, the cumulative effects of the activities.

Cumulative Effects

At this point, it is understood that the lease and exploration phase of OCS Sale No. 53 will not require development or construction of any additional facilities. Cumulative effects beyond this phase would occur only if significant amounts of hydrocarbons suitable for commercial development are discovered. In the event that such discoveries lead to commercial production at any or all of the subareas in the sale, extensive additional facilities might be necessary. Depending on whether gas and/or oil are produced from a subarea, additional pipelines may be constructed offshore, or barge and tanker traffic to onshore collecting facilities may increase. Various relatively permanent man-made structures may be constructed offshore, such as drill platforms and storage and loading facilities. Although it is not anticipated that the development/production phase of Sale No. 53 will require the additional construction of any refineries in California, it is estimated that under the more probable development scenario, onshore gas and oil processing plants and storage tanks would be necessary adjacent to four of the five subareas, occupying from 9 to 41 acres each. In addition, it will probably be necessary to construct support bases onshore near each subarea to store pipe and offshore drilling materials, as well as approximately 200 miles of underground pipelines with associated 100-foot wide rights-of-way to transport gas and oil to refineries and shipment centers.

Several of these potential development/production related facilities could have an effect on Endangered and Threatened species. For instance, depending on their exact placement across San Mateo County, underground pipelines could effect the San Francisco garter snake and the San Bruno elfin butterfly. But all these indirect, interrelated, and interdependent effects would presumably result only if hydrocarbons are discovered in sufficient quantities to support a production phase. Since the specific location, nature, and size of facilities that may be necessary under the development/production phase is so imprecisely known at this time, and since both BLM and GS recognize that an additional and separate Section 7 consultation would be necessary prior to any development/production, consultation as to the precise nature of any cumulative effects beyond the exploration stage should appropriately take place when production plans are presented for approval and consultation will be reinitiated at that time.

The FWS would like to remind BLM and GS that activities along the central and northern California coast which are not directly related to OCS Sale No. 53 and associated exploration activities, but are expected to occur with development/production, could have impacts on some Endangered and Threatened species. The Service is advising that the following activities, although not subject to this consultation, could affect listed species along the California coast.

1. Future projects to prevent beach erosion, dredging projects, and port improvement or expansions will cause environmental concerns which may impact coastal listed species.

2. The possible sitings of liquified natural gas and refinery facilities may impact listed species. Impacts could result from the location of the facil-

ity and the transportation routes associated with the movement of the gas or oil from the offshore area to onshore facilities. Increased chronic oil pollution and the possibility of a large spill from either pipelines or tankers may affect local areas and listed species found in those areas.

3. Numerous coastal development projects will continue to reduce the habitat of many listed species. Of particular concern is the loss of nesting habitat for the California least tern and the loss of wetland habitat essential to the California clapper rail and salt marsh harvest mouse.

Long-term increase of these and other activities, alone or in combination, may exceed the tolerance level of listed species and may adversely affect them.

BLM and GS should be aware of these activities and their potential for affecting listed species. This potential should be considered during any planning of OCS development/production activities. Both agencies should expend every effort to meet their obligation to conserve listed species throughout all phases of OCS activities.

Should any changes be made in the alternative courses of action presented above which may affect listed species, should expansion of existing onshore facilities or the establishment of new facilities occur which may affect listed species, or should new species be listed that may be affected by the project, you must reinitiate consultation. In order to complete the consultation process, we must receive from you an indication in writing of the alternative course of action you intend to follow. Furthermore, the BLM is reminded of the requirements of Section 7(d) of the ESA, stating that after initiating consultation, a Federal agency shall not make any irreversible or irretrievable commitments of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would avoid jeopardizing the continued existence of any Endangered or Threatened species.

Your request for consultation includes the following species: California condor (Gymnogyps californianus), American peregrine falcon (Falco peregrinus anatum), bald eagle (Haliaeetus leucocephalus), brown pelican (Pelecanus occidentalis), California least tern (Sterna albifrons browni), California clapper rail (Rallus longirostris obsoletus), Aleutian Canada goose (Branta canadensis leucopareia), Morro Bay kangaroo rat (Dipodomys heermanii morroensis), salt marsh harvest mouse (Reithrodontomys raviventris), southern sea otter (Enhydra lutris nereis), San Francisco garter snake (Thamnophis sirtalis tetrataenia), Santa Cruz long-toad salamander (Ambystoma macrodactylum croceum), Smith's blue butterfly (Euphilotes [=Shijimiaeoides] enoptes smithi), San Bruno elfin butterfly (Callophrys mossii bayensis), Mission blue butterfly (Icaricia icarioides missionensis), globose dune beetle (Coelus globosus), San Francisco tree lupine moth (Grapholitha edwardsiana), and Callippe silverspot butterfly (Speyeria callippee callippee).

Threatened or Endangered marine mammals which may be affected by the project, excluding the sea otter, are under the jurisdiction of the National Marine Fisheries Service (NMFS) and, therefore, are not included in the above list or considered in this consultation.

The globose dune beetle is a species proposed for listing and is, therefore, not subject to consultation.

The Callippe silverspot butterfly and San Francisco tree lupine moth have been withdrawn as proposed species and also are not subject to consultation.

The California condor, Aleutian Canada goose, Morro Bay kangaroo rat, San Francisco garter snake, Santa Cruz long-toed salamander, Smith's blue butterfly, San Bruno elfin butterfly, and Mission blue butterfly are found adjacent to the subject project area but will not be affected.

The American peregrine falcon, bald eagle, brown pelican, California least tern, California clapper rail, salt marsh harvest mouse, and southern sea otter may be affected by the project proposal. The project's impacts on these listed species, along with recommendations for reducing any adverse affects, are provided in the individual species accounts.

Species Accounts

The following species accounts describe the biology and concerns for the various listed species located within the project proposal. Also included, in some cases, are specific recommendations for each species which are intended to minimize potential impacts of the proposal. A biological opinion regarding the impact of the project is given following the species account for the sea otter and another following the accounts for the other species of concern.

Southern Sea Otter (Enhydra lutris nereis)

The population of sea otters in California was listed in the Federal Register as Threatened on January 14, 1977 (42 FR 2968). This determination stated that "A major spill of oil from a tanker in the waters in the vicinity of the range of the southern sea otter is probably the most serious potential threat to the species. There seems little question that oil would be harmful to these animals; and, indeed, they are more susceptible to this problem than most species." Critical Habitat has not been determined for this species. The Service has drafted the Technical Review Draft of the Southern Sea Otter Recovery Plan.

The historic range of sea otters extended from Morro Hermoso, Baja California, northward along the coast, becoming continuous with the populations now found along the Alaska Peninsula and westward. Historic abundance of otters in California was estimated at about 16,000 animals (CDFG, 1976).

Sea otters were heavily exploited for their pelts by Russian and American fur traders from 1786 throughout the early 1900's. The California population of the sea otter was so depleted that it was thought to be extinct by the turn of The International Fur Seal Treaty of 1911 and California State laws enacted since 1913 which prohibited taking and possessing sea otters, established legal protection for the species. The California Sea Otter Refuge was established in 1941 to further protect the otter from being shot. The Marine Mammal Protection Act of 1972 and particularly the ESA, have increased the legal protection of the California sea otter population.

The "rediscovery" of the southern sea otter by the scientific community occurred in 1938 when a group of 100 to 300 otters were observed near Bixby Creek, just north of Point Sur (Peterson, 1969) (Fig. 1).

The range expansion of the southern sea otter population from its nadir in 1914 to its occupied range in 1979 averages 1.8 miles per year southward and 1.06 miles per year northward (Benz and Kobetich, 1980). The current range extends along approximately 200 miles of coast between Soquel Point in Santa Cruz County, south to Pismo Beach, San Luis Obispo County (Benz and Kobetich, 1980).

A few wandering individuals have been sighted to the north and south of these range limits. Provided the population continues to increase, the population should eventually extend its range south to the Channel Islands and north beyond Point Ano Nuevo.

The California Department of Fish and Game (CDFG) has attempted to monitor population growth (Fig. 2, Table 1). Based on estimates of population size between 1940 and 1969, the average annual rate of increase was 5.4 percent (Woodhouse, et al, 1977). This rate of increase is comparable to that seen in Alaskan populations. A CDFG census in 1976 estimated an increase in population size to approximately 1,760 animals. A similar census in 1979, estimated the population at 1443 individuals. Although this census was impaired by poor weather conditions, the best available data do not indicate an increase or decline in population size. Service biologists believe that the approximate size of the present population has not changed substantially since 1976, and probably numbers about 1800 animals. In comparison with open-ended populations in Alaska, the California population is without any doubt growing at a rate slower than one would expect. There are three general explanations for this: (1) age--specific fecundity is different; (2) age--specific survival is different (including human-caused mortality); and (3) animals are being lost through emigration.

The southern sea otter exhibits a dumbbell-shaped distribution pattern along the California coast. The largest concentrations are located at the periphery of the range. These groups (fronts) are predominantly composed of both breeding

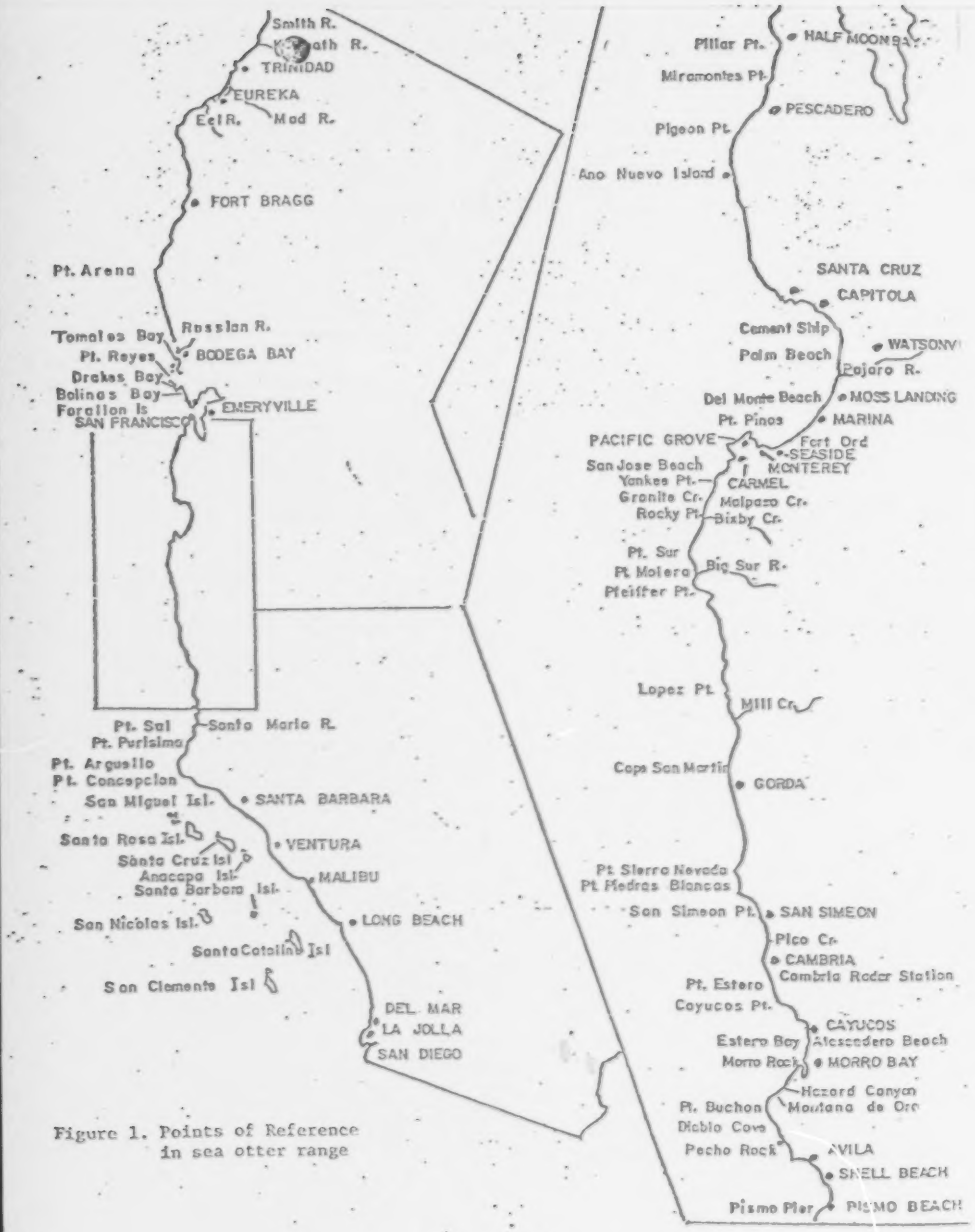

Figure 1. Points of Reference in sea otter range

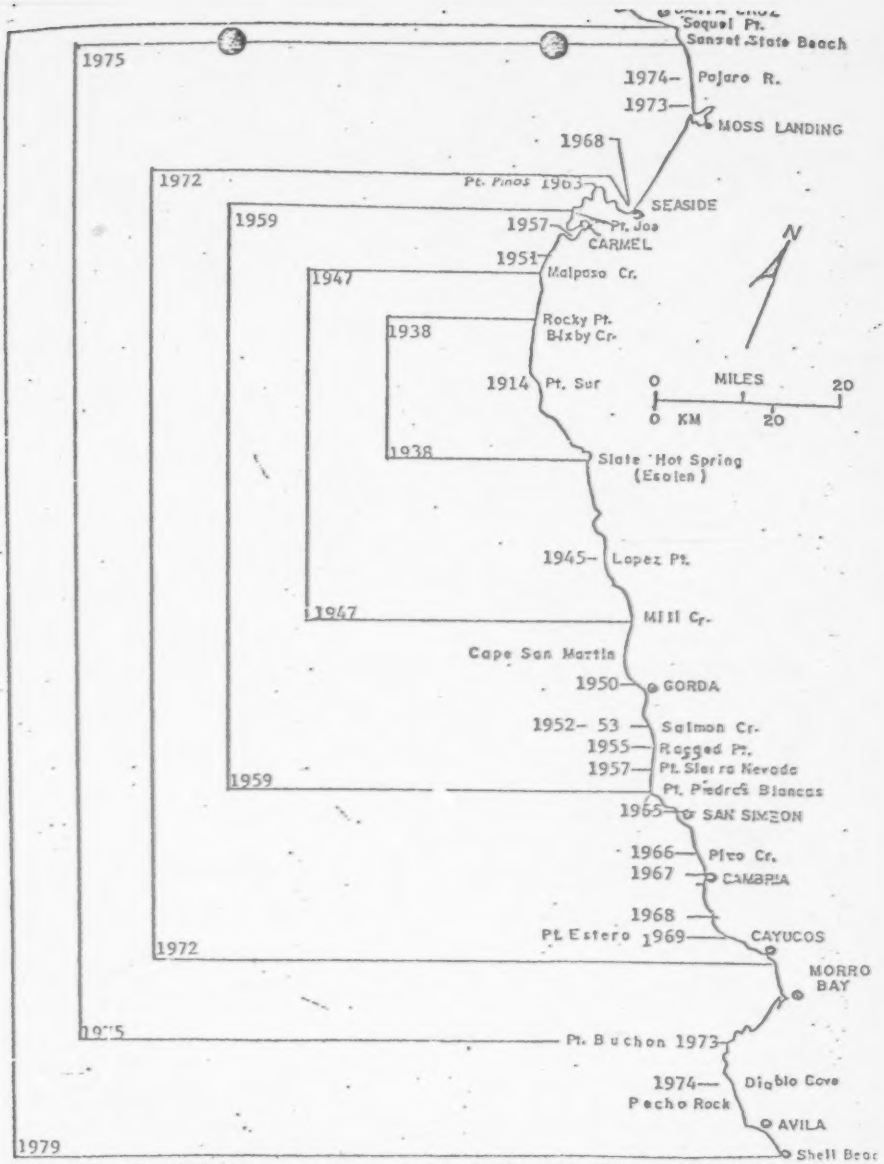

Figure 2. Established sea otter range in 1938, 1947, 1959, 1972, 1975, and 1979 and location of peripheral groups in other years. (Updated from CDFG, 1976)

Table 1. Range and Population Expansion of the Sea Otter Along the California Coast, 1914 to 1979. (Updated from CDFG, 1976)

Year	Location of Migrant Front		Increase in Range in Statute Miles			Average Increase in Miles per Year			Linear Miles of Range	Total Miles^2 of Habitat to 20 fm	Total Estimated Population	Years Between Estimates
	Northern	Southern	to North	to South	Total	to North	to South	Total				
1914	Pt. Sur	(Pfeiffer* Pt.)	-	-	-	-	-	-	(7)*	(9.0)*	(50)*	-
1933	Rocky Pt.	Slate Hot Springs	7	(13)	(20)	0.29	(0.63)	(0.92)	27	18.4	310	24
1947	Malpaso Cr.	Mill Cr.	5	14	19	0.56	1.02	1.58	46	36.5	530	9
1950	Yankee Pt. (1951)	Gorda	1	8	9	0.33	2.67	3.00	55	46.2	660	3
1955	Pt. Lobos South Shore	Ragged Pt.	2	10	12	0.40	2.00	2.40	67	59.2	800	5
1957	Pescadero Pt.	Pt. Sierra Nevada	7	4	11	3.50	2.00	5.50	78	66.0	880	2
1959	Pt. Joe	Pt. Piedras Blancas	4	4	8	2.00	2.00	4.00	86	74.2	1,050	2
1963	Otter Pt.	San Simeon	3	6	9	0.75	1.50	2.25	95	84.7	1,190	4
1966	Lover's Pt.	Pico Cr.	0	4	4	0.00	1.33	1.33	99	92.0	1,260	3
1969	Seaside	Pt. Estero	4	8	12	1.33	2.67	4.00	111	105.2	1,390	3
1972	Seaside	Cayucos Pt.	0	9	9	0.00	3.00	3.00	120	125.2	1,530	3
1973	Moss Landing	Pt. Buchon	14	18	32	14.00	18.00	32.00	152	142.0**	1,720	1
1974	Pajaro River	Pt. Buchon	4	0	4	4.00	0.00	4.00	156	144.2**	1,730	1
1975	Sunset State Beach	Pt. Buchon	5	0	5	5.00	0.00	5.00	161	146.7**	1,760	1
1979	Soquel Pt.	Shell Beach	13	19	32	3.25	4.75	8.00	193	Unknown	1,443***	4
TOTALS			69	117	186	1.06	1.80	2.86	193	Unknown	?	65

* No records, rough assumptions made (see text).

** Square miles of foraging habitat along Pismo clam beaches are considered 0.50 miles^2 per linear mile of sandy

and non-breeding males. At present, the southern front forages within a 10-mile range extending between Avila Beach south to about Arroyo Grande Creek. The northern front forages in the Santa Cruz region. The size of frontal groups varies seasonally. Peak numbers occur in late winter and early spring. In the south, winter studies estimate between 150 and 200 animals; while in the north front, the peaks are substantially smaller ranging between 60 to 70 animals (Jameson, pers. comm.). Breeding females, juvenile females, and dependent pups are principally distributed throughout the center of the range. The distribution of otters tends to become more clumped during the winter. Kelp beds die back in the winter and storms further reduce the remaining beds. Consequently, the concentrations of otters rafting in the remaining kelp beds become larger.

Sea otters consume a variety of invertebrate species. They consume about 25 to 35 percent of their body weight per day (Kenyon, 1969; Costa, 1978). Sea otters maintain a high metabolic rate which partially compensates for the lack of an insulating layer of subcutaneous fat. Insulation from cold seawater is provided entirely by air trapped in the dense fur (Morrison et al, 1974). The average body temperature of northern sea otters was found by Morrison et al (1974), to be 38.1°C even though they exist in waters that rarely exceed 5°C. Foraging occurs intermittantly throughout each day. Sea urchins, abalone, rock crabs, and pismo clams appear to be selectively preyed upon whenever they are available. As areas are occupied for longer periods by sea otters, the availability of large invertebrates decreases and smaller species such as turban snails, kelp crabs, mussels, and octopuses are more abundantly consumed. Woodhouse, et al (1977), identify 51 species of prey known to be consumed by the southern sea otter. Sea otters show a great capacity for adapting to the availability of food prey in different habitats. A major factor limiting the sea otter's range of foraging is the availability of food. Southern sea otters rarely dive beyond 20 fathoms when foraging since most food species become more scare at greater depths. Although sea otters can adapt to a variety of habitats, it is apparent that some habitat types are more suitable than others as evidenced by differential rates of range expansions over different habitats. The greatest abundance and diversity of food items occur in areas with rocky bottoms. This may account for the relatively slow rate of expansion that occurs in these areas. Conversely, the fastest rates of expansion tend to occur over areas with sandy bottoms (Woodhouse, et al, 1977).

Southern sea otters rarely haul out. At sea, they often rest in groups (rafts), of a few to over 100, but otherwise they are solitary animals. When resting at sea, they often wrap themselves in kelp to remain stationary, although in winter when kelp beds are reduced, they may raft some distance offshore without the benefit of kelp while waiting out a storm (Woodhouse, et al, 1977), but usually they seek the protection of sheltered coves. Sea otters are nonmigratory, although seasonal movements of individuals within the constant range do occur. Juveniles seem to wander more than adults (Estes, 1980).

Sea otters are apparently polygamous, although the exact nature of the mating system appears to vary. Pair bonding for periods of 3-4 days has been observed by Kenyon (1969) and Vandervere (1970), during which time copulation is frequent, occurs in the water, and is eventually terminated by the female leaving the male.

According to Vandervere's observations, it would seem that pair bonding may involve cruising males that wander through female areas until a receptive female is located. Among the southern sea otters, Vandevere has also observed territorial behavior in males, with some territories being maintained by the same male for at least a year. It is presumed that territories include a number of breeding females that are protected from intrusion by cruising males. Reproductive maturity of Alaskan males occurs at 5 to 6 years, and active breeding starts several years later. Alaskan females are thought to become sexually mature at 3 years of age, but they do not breed for another 2 to 3 years (Kenyon, 1969). Although breeding and pupping may occur throughout the year, breeding activity apparently peaks in October through December (Vandevere, 1970), and pupping occurs from December through February (Sandegren, et al, 1973). Delayed implantation occurs but the durations of the period of pre-implantation is not known. Gestation in wild populations is estimated to last from as little as 7 and 1/2 months to 13 months (Benz and Kobetich, 1980; and Vandevere, 1970). Southern sea otters have been observed to pup in each of at least 2 consecutive years (Vandevere, 1978 and 1979), although northern sea otters bear a pup on the average of once every 2 years (Kenyon, 1969). The dependency period of pups on females is from 6 to 8 months (Vandevere, 1979).

Cumulative Effects Resulting from Oilspill Risks to Sea Otters

An oilspill associated with production and transportation could affect sea otters in several ways. When trying to determine these effects, the type of oil and the amount of oil on the surface of the water must be considered. A spill is influenced by environmental factors including wind, waves, temperature, suspended sediments, and time. Direct contact with oil would mat the coat and decrease the otter's natural insulation against temperature loss, resulting in hypothermia and probable death of individuals. Constant grooming to maintain the insulating quality of the coat would result in the direct ingestion of some petroleum products. Ingestion of petroleum products may also occur while eating contaminated invertebrates. "The accidental exposure of two sea otters to a small but unknown amount of oil (probably diesel) in an experimental holding pool on Amchitka Island resulted in fur matting, progressively severe distress, emergence from the water and death by exposure within several hours." "The oil in this case formed a visible sheen comparable to that sometimes present in harbor areas where gulls appear unaffected by it" (Kenyon, unpublished data).

There are natural factors which affect the persistence of oil in the environment such as dilution, evaporation, photooxidation, precipitation by adsorption on suspended particles, and microbial degradation. Because of these factors, it is difficult to determine the effects of oil on benthic communities. Oil which settles to the bottom, depending upon the factors identified above, could kill benthic organisms either by smothering the organisms or from its toxic effects. Therefore, in the event of an oilspill, a major effect on otters could be the local loss of food sources. The secondary effect would by the long-term contamination of shellfish populations which may also result in the ingestion of petroleum products by the sea otters.

The DEIS for OCS Sale No. 53 assesses the probabiity of an oilspill reaching the sea otter range within 3 and 30-day periods. The narrative implies that the probability of impact within the 3-day period would be the worst possible situation because of the greater toxicity of newly spilled oil to most organisms as compared to oil that has been weathered and detoxified by natural actions over a longer period of time. Although the toxins found in newly spilled oil may accumulate in the otter's food supply, a direct and more detrimental impact is the oiling of the otter's fur. The FWS considers that the primary impact of oil on otters is physical contact rather than toxicity of the oil; therefore, data on oilspills impacting their range within 30 days are the primary data that should be considered when assessing possible effects on sea otters. The residue of crude at the end of 30 days and beyond is also of vital importance to sea otters' survival in relation to physical contact, possible ingestion, and potential long-term effects of oil toxicity on sea otter habitat. Data on long-term effects are currently unavailable.

Oilspill Analysis

GS provided BLM with the Oilspill Risk Analysis for the Central and Northern California Outer Continental Shelf Lease Area (Proposed Sale No. 53) (Samuels and Lanfear, 1980). This report includes probability figures that serve to estimate the possible risks to the environment that may result from the subsequent development/production phase of OCS Sale No. 53. The model used to generate these probabilities of risks incorporates information pertaining to monthly ocean currents and wind data, the estimated volume of oil to be produced, and the expected methods and distances of transport (Lanfear et al, 1979). The final essential ingredient necessary to evaluate risks is designated targets to which probabilities of oilspills can be associated. In preparing the oilspill risk analysis for this sale, GS designated a series of target areas that appeared to exhibit a high degree of vulnerability to oilspills because of biological, recreational, or other associated resources, as well as arbitrarily designating land segments of 27 to 30 miles along the California coast (see Fig. IV.A.1-4 from the DEIS). Figure IV.A.1-1 from the DEIS shows the approximate extent of recognized sea otter range and the location of the five segments used in the sale oil risk analysis.

Two basic kinds of probabilities are generated by the model: conditional probabilities and overall probabilities. The probability that, if an oilspill occurs at a given launch point (an arbitrarily chosen point of origin within a subarea or along proposed transporation routes), it will contact a particular

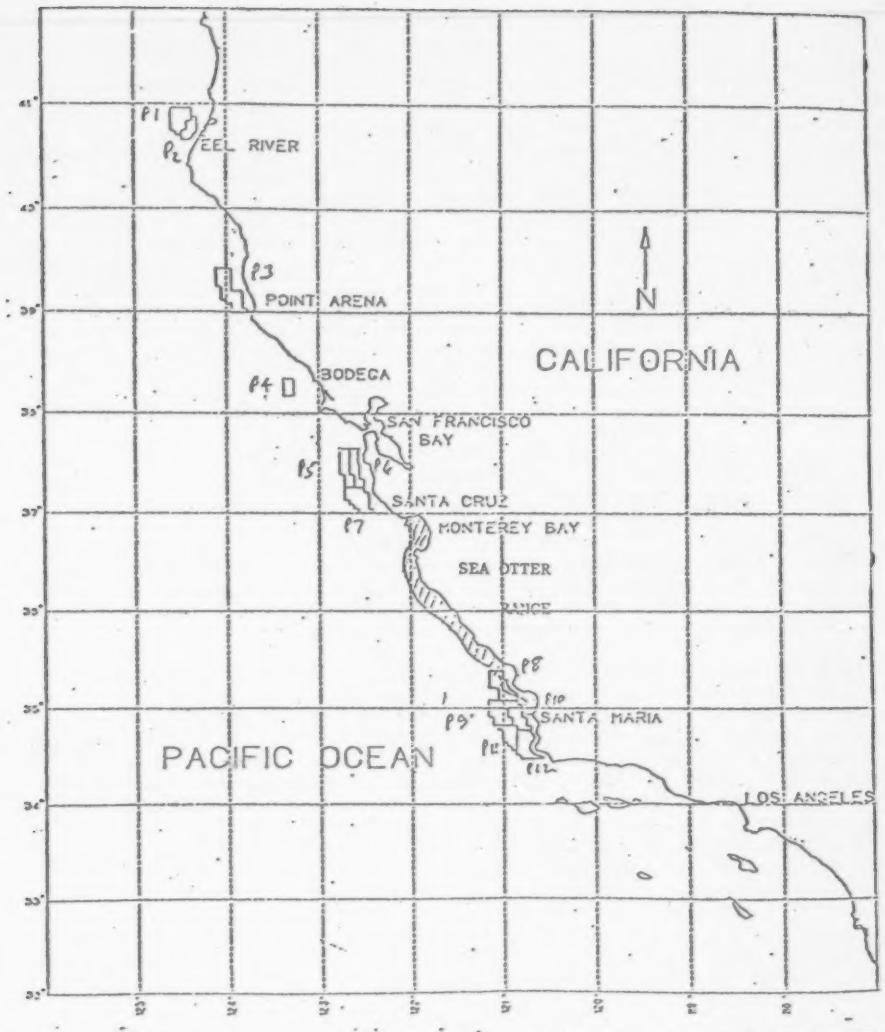

Figure IV.A.1-1 Map Showing Subdivisions of the Proposed Leases for Cent and Northern California OCS Lease Sale No. 53

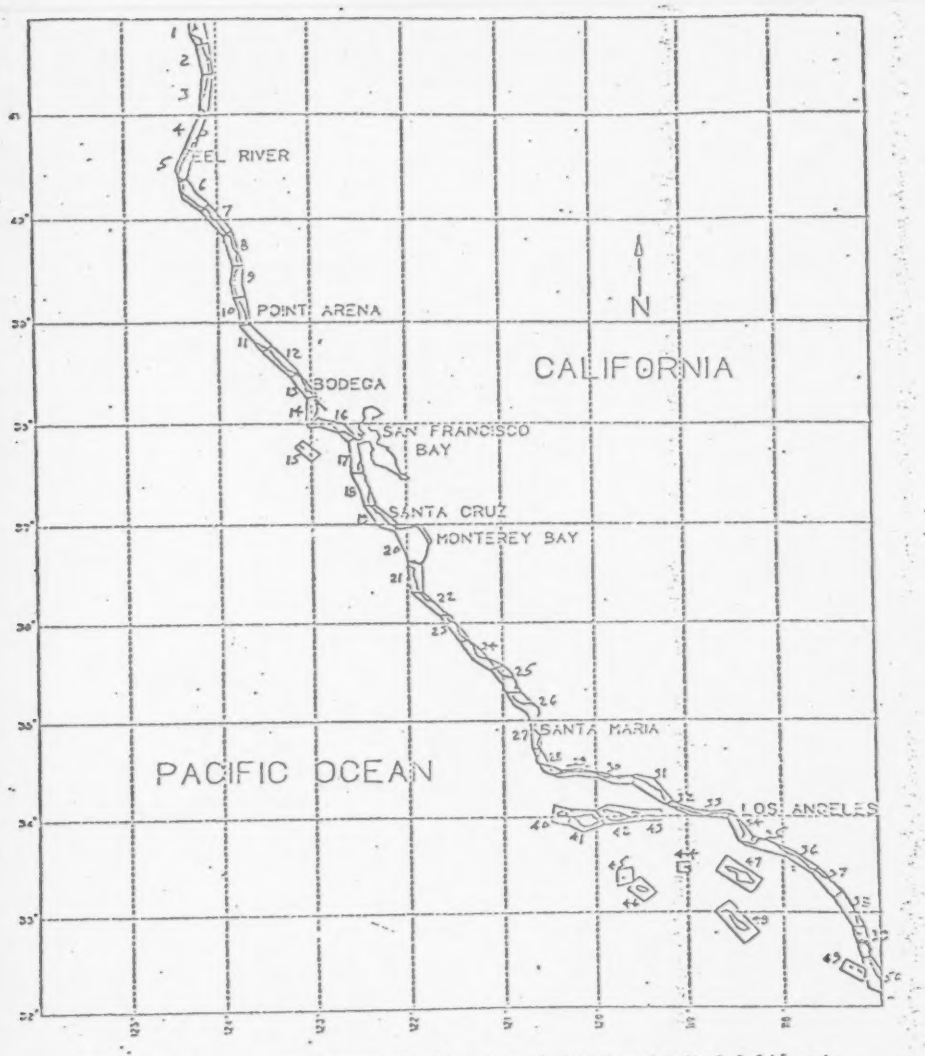

Figure IV.A.1-4 Map Showing the Division of the Shoreline of California Into Segments of Approximately Equal Length

Targets impacted by oilspills	Within 3 days				Within 30 days			
Any Point of Sea Otter Range	27%				53%			
Land Segments								
17	4%				10%			
18	10%				26%			
19	1%				8%			
20	0.5%				3%			
21	0.5%				4%			
22	0.5%				2%			
23	0.5%			27%	1%			53%
24	0.5%				6%			
25	0.5%	26%			11%	48%		
26	25%		41%		38%		61%	
27	21%				24%			
28	6%				16%			

Table 2. Overall probability (expressed in percent chance) that one or more oilspills of 1000 bbl. or more will occur during the life time of the project (30 years) and impact designated targets within 3 and 30 days. ALL TRACTS LEASED.

Targets impacted by oilspills	Within 3 days	Within 30 days
Any Point of Sea Otter Range	27%	52%
Land Segments		
17	2%	3%
18	0.5%	5%
19	0.5%	4%
20	0.5%	2%
21	0.5%	3%
22	0.5%	2%
23	0.5%	1%
24	0.5%	6%
25	0.5%	11%
26	25%	38%
27	21%	24%
28	6%	16%

Table 3. Overall probability (expressed in percent chance) that one or more oilspills of 1000 bbl. or more will occur during the life time of the project (30 years) and impact designated targets within 3 and 30 days. ONLY SANTA MARIA TRACTS LEASED.

target in a given period of time, it is termed a conditional probability. These consider primarily the effects of wind and ocean currents on the direction of movement of an oilspill. Overall probabilities take into account the volume of oil estimated to occur in the particular launch point and the methods and routes of transportation that may be used, in addition to the effects of wind and ocean currents. The result is the probability or percent chance that one or more oilspills will occur in a given area that can impact a given target (or land segment) within various periods of time (3, 10, or 30 days from launch) during the 30-year life of the project. All probabilities given are for oilspills of 1000 barrels or more. An area that is estimated to contain little or no oil is a small risk. No matter how high the conditional probabilities of oil from such an area striking a target may be, the small amount of oil would make the likelihood of an oilspill occurring low and, therefore, the overall probability figure for this area would be low. Overall probabilities also take into account the possibility of transportation as well as platform spills.

As of August 28, 1980, new overall production probabilities for OCS Sale No. 53 became available based on more recent estimates of oil volume in the sale area. Since conditional probabilities do not depend on oil volume estimates, those included in the DEIS remain the same. A comparison of Figures IV.A.1-1 and IV.A.1-4 reveals that sea otter range is just about entirely included within land segments 20 through 26, although small numbers of individual otters have been observed as far north as Point Ano Nuevo in the middle of segment 19 as well as to the south of segment 26. Tables 2 and 3 give the overall probabilities of one or more oilspills of 1000 barrels or more occurring during the approximate 30-year life time of the project that will strike sea otter range or various land segments in 3 and 30 days. These have been determined on the basis that (a) all five subareas will be sold (Table 2), and (b) only the Santa Maria subarea will be sold (Table 3). The DEIS states that 1.65 spills are expected from the Santa Maria subarea during the life of the project. If this spill risk was calculated on the basis of the recent August 28, 1980, probabilities, the expected number of spills would be even higher. Additionally, this recent risk analysis detected a marked degree of seasonality in the probable occurrence of spills from Santa Maria that would impact sea otter range. The preponderance of occurrence of spills that would hit sea otter range would be expected to impact during the fall and winter months (September through February). Only spills from approximately the northern one-fifth of Santa Maria would be expected to hit sea otter range during the spring and summer months (March through August).

From Table 2 it is apparent that the highest probabilities for oilspill impacts in sea otter range are associated with land segments 24, 25, and 26, and these high probabilities continue south to include segments 27 and 28. Also, if the probabilities for oilspills that would impact approximately the southern 40 percent of sea otter range are combined, then for all tracts sold there is a 26 percent chance that one or more spills will occur and hit this area in 3 days, and a 48 percent chance that the same would occur hitting this southern 40 percent of the range in 30 days. When one additional land segment of approximately 27 miles is added to the south of the current established sea otter range (an area in which the sea otter is expected to expand), these figures become 41 percent in 3 days and 61 percent in 30 days.

Comparing the two tables also shows that by eliminating all tracts except the Santa Maria tracts from the sale, the probability of one or more spills occurring that would impact approximately 60 miles of coast to the north of current otter range (land segments 18 and 19) is reduced from 26 percent and 8 percent to 5 percent and 4 percent respectively. Presumably this reduction in probabilities can be attributed largely to the elimination of oil threats from the Santa Cruz subarea.

Finally, it is recognized that obtaining necessary data and constructing a model to predict the potential occurrence and movement of oilspills for such a vast area is, at best, very difficult; this is the best technology available. Although we were not able to explore the data source and method of constructing the model used in this oilspill analysis, the findings in this biological opinion were based on the oilspill data and information as provided in the DEIS, Open-File Report 80-211, and the new oilspill analysis data of August 28, 1980.

Oilspills along the present 200 mile long sea otter range have been few and exceedingly small. Therefore, data on the actual movement and dispersion of spilled oil are virtually nonexistent.

The only recorded observations of the movement of a floating substance within the sea otter range were plotted when a lumber barge loaded with 2-million board feet of cut lumber capsized approximately 40 km west of Point Sur, California, on February 12, 1978. Within 60 days, lumber from the barge had covered virtually the entire range of the sea otter excluding only Point Soquel, Santa Cruz County. In only 12 days, the lumber was distributed throughout most of the interior range of the otter, i.e., from Moss Landing to Point Estero (Jameson, pers. comm. and VanBlaricom and Jameson, 1979). These observations exemplify the uncertainty and magnitude of wind and current patterns of California's offshore waters during the winter months. This increases our concern that the movement of hydrocarbons throughout the southern sea otter range will be unpredictable.

The ability to contain an oilspill at sea is questionable. The technology for containment of an oilspill in the open ocean is in its infancy. According to the U.S. Coast Guard, containment may reach at best 50 percent (Louks, pers. comm.) and may be as low as 10 percent (Hann, pers. comm.). Therefore, we can not rely on any oilspill contingency plan to protect the otters. Furthermore, a spill need not contact the entire sea otter range to jeopardize this population (Ames, pers. comm.; Jameson, pers. comm.; and Estes, pers. comm.). A large spill in either the northern or the southern peripheral areas (where breeding and non-breeding males aggregate) or within the center of the range (where breeding females, juveniles females, and male breeding territories are found) could feasibly impact the population such that either the population or its recoverability is endangered.

Scenarios of Potential Adverse Cumulative Impacts from Oilspills on Sea Otters

Current Population Status

The best available data have not been able to substantiate an increase or decline in population size. Likewise, the best available data cannot explain the cause(s) for the apparent decreased in population growth rate. If this is indeed the case, the threat of an oilspill or any other decimating factor to the sea otter population becomes all the more critical. In fact, if the population is growing at all, it is without any doubt growing at a rate slower than one would expect (Benz and Kobetich, 1980). This fact casts sincere doubt that the present population is capable of supporting a translocation program as identified in the Draft Recovery Plan (1980).

As identified in the oilspill risk analysis, the greatest threat occurs in the fall and winter. The winter (February to March) is probably the period during which the shouthern sea otter population is the most susceptible to impacts from oilspills. During winter months kelp beds decrease in size as annual kelps die and winter storms tear apart remaining perennial kelps. This results in larger concentrations of otters rafting along smaller areas of shoreline. Furthermore, the winter months tend to be the peak pupping period; therefore, the number of young pups is greatest at this time. These pups are helpless and extremely dependent upon female care. There have been no studies to determine if the fur of pups and adults have different oiling characteristics. Because of the intense attention afforded the pup by the females, if the female becomes contaminated, the pup will also surely become contaminated. Pups are incapable of grooming over their shoulders and, therefore, this area may remain matted but most likely will be groomed by the female. Since pups are dependent upon demanding parental care for at least 8 months, any additional stress in this bonding period will decrease the likelihood that the pup will survive to independence assuming that neither the pup and/or the female initially dies as a direct result of oil contamination and hypothermia. The female may succumb to oil that is ingested during grooming either the pup or herself. Therefore, relative to a spring or summer spill, a winter spill is more likely to contact a greater number of otters, occur during a greater sensitive period for pups, and result in a greater loss of individuals to the sea otter population which is currently in a precarious state of existence.

Presently the southern front is along land segment 26 and these animals forage within a 10-mile stretch from Avila Beach south to Arroyo Grande Creek. Numbers of otters in this area increase from about 100 individuals to over 150 from

January to May. This group is primarily composed of both breeding and nonbreeding males. Just up the coast from Avila Beach (i.e., Point San Luis) begins that portion of sea otter range inhabitated primarily by females and their pups. From Point San Luis north to San Simeon, the CDFG regularly censuses discrete units of shoreline which total about 50 linear miles. Aerial counts within this area during January and February, 1980, estimated a minimum of 235 individuals including pups. During the same time period, the Service's sea otter biologists at Point Piedras Blancas counted 106 independent adults and 23 dependent pups between Santa Rosa Creek (Cambria) and Point Piedras Blancas (about 15.5 miles). Of the animals counted in this area, 18 percent were pups indicating a high pup to adult ratio in this section of their range. The range between Cayucos north to Cambria contains approximately 10 to 15 percent of the reproductive population of female sea otters (Wendel, pers. comm.).

Scenarios

There are several scenarios to this case that should be examined. The areas in which these scenarios are placed include land segments 24, 25, 26, and 27. These segments have been identified with some of the highest probabilities per land segments in which a large oilspill will occur. All of these areas are in the zone of potential oil impact primarily from the Santa Maria tract.

At present, segments 24 and 25 contain mostly females and dependent pups. Segment 26 contains some females and dependent pups but also the entire southern front which is mostly males. Segment 27 is included to allow for range expansion by sea otters which should occur during the lifetime of the proposed action. If the southern expansion continues at its average rate of expansion of 1.8 miles per year, then within less then 15 years the range of sea otters will extend to Purisima Point which is well within segment 27.

Scenario 1 - During the winter, occurrence of a large oilspill in the Santa Maria Basin would contact the southern front contaminating large numbers of otters. It is highly unlikely that more than just a few otters that have been oiled can be recovered (Ames, pers. comm.; Wendel, pers. comm.; and Estes, pers. comm.). Consequently, the mortality will be high. If these otters die, a large number of breeding males will be lost from the population. The impact on the population from the loss of these breeding males is unknown but it will surely have a retarding effect on population growth and recovery. Males from other portions of the range may filter in and breed, thereby, partially compensating for the breeding males that have died. The effect on the population of losing the juvenile and nonbreeding adult males is also unknown. Considering the relative inability to contain an oilspill in the open ocean plus the rough and unpredictable nature of winter sea conditions, the oilspill continues to impact sea otter range at least as far north as San Simeon (land segment 24). Most of the otters in this range (which are predominately females and dependent pups) would become contaminated with oil and subsequently die.

If all individuals within the total range from San Simeon south to Arroyo Grande Creek perish, this number (at least 385 individuals) represents a loss of over 21 percent of the entire California sea otter population (using the Service's estimate of 1800 animals) and 10 to 15 percent of the breeding population. Keep in mind that at present there are no data indicating that the population is either increasing or decreasing. If the population were increasing at a rate of 5 percent per year, and if just half of the number of breeding females within this scenario were lost, it would take 15 years for the group to double (i.e., return to the total number of animals present prior to the loss). During this time period, the sea otter population will be existing tenuously and exposed to contaminating threats, not only from new oilspills from OCS developments, but also from existing tanker traffic, the oil transfer marine terminals at Moss Landing and Morro Bay, and threats not yet identified and/or substantiated.

Such a loss (as identified in Scenario 1) will adversely affect the recoverability of the southern sea otter population and may indeed adversely affect the survival of the southern sea otter population. The indirect effects of such an oilspill on the sea otter are unknown at this time.

Scenario 2 - This scenario allows for the sea otter population to expand in both range and number. In this scenario, the southern front is foraging along

land segment 27. The conditions and characteristics of the oilspill for this scenario are the same as in Scenario 1.

The effect of the oilspill on the southern front and the resulting impact on the entire population will probably remain the same as in Scenario 1. However, the sea otter range south from San Simeon is now larger than that in Scenario 1. Also, the increase in total population size would be accounted for predominantly as a result of additional females and dependent pups occupying the new range. These new individuals along with the residents identified in Scenario 1, will be impacted by the oilspill. The proportion of individuals (within land segments 24 through 27) that become oiled and subsequently die should remain the same as that in the first scenario (i.e. 24 through 26).

Although the population has increased in range and size, the greatest proportion of the increase will presumably be in the southern portion of the range (based on existing data). Consequently, the entire southern increase will be impacted by the oilspill. Considering these facts, the expansion of the range into Section 27 and the concurrent increase in the number of sea otters in this portion of the range will represent a larger proportion of the California sea otter population than in the first scenario. The impact from an oilspill will, therefore, exceed that in the first scenario and will result in even greater adverse impacts on the sea otter population.

Scenario 3 - This scenario examines the same conditions as in Scenario 2; however, here we assume that the population increases in range but not in total numbers. This situation is identical to the nature of the present population as it has changed during at least the past 3 years.

If the sea otters occupying ranges farther south and north do not increase in total numbers, then those animals found in land segments 24, 25, 26, and 27 will represent an even higher percentage of both the total population and reproductive portion of the population than if the population did not expand at all. Therefore, a higher percentage of the total population is made vulnerable to the same oilspill threats examined in Scenarios 1 and 2. The adverse impacts from this scenario are more severe than the preceeding two.

Recovery Considerations

The FWS is currently engaged in a program to provide for expansion of the range of the southern sea otter to help eliminate the risk that a single spill would severely impact the species. One possibility being examined is translocating and reestablishing colonies elsewhere. Areas currently being considered are the Channel Islands, northern California, and areas outside California. The GS's publication, An Oilspill Risk Analysis for the Central and Northern California Outer Continental Shelf Lease Area, indicates that once an oilspill from the Santa Maria subarea occurs, there is a 14 percent chance that it will reach the Channel Islands within 30 days. This prediction illustrates the possible conflict between oil related activities and the recovery of the sea otter, additional to those which already exist from present OCS activities within and near the Channel Islands.

This summarizes the potential cumulative effects of the proposed project, if completed to production phases, and the data and information considered in arriving at the biological opinion.

Biological Opinion

Therefore, it is my biological opinion that your action, as proposed (the lease and exploration phase of OCS Sale No. 53), is not likely to jeopardize the continued existence of the sea otter. However, assuming that the lease and exploration phase leads to development and production, with associated impacts as described in the DEIS, before those actions are undertaken, Section 7 consultation must be reinitiated.

In order to preclude the potential for a jeopardy determination resulting from further consultation associated with the development and production phase, the following alternatives could be implemented:

1.a. Delete at this time the entire Santa Maria subarea from the sale so as to nearly eliminate the possibility of oilspills occurring in the southern portion of the sea otter range. This is particularly crucial since sea otters appear to be concentrated in frontal areas near the northern and southern limits of their range, areas where expansion of the population is most active. There are suggestions that sea otter expansion (and perhaps transplantation) to the Channel Islands area or other areas is essential for eventual recovery of the species.

1.b. Delete at this time tracts 104 through 128 from the Santa Cruz subarea (identified as Potential Launch Point P7 in the DEIS) from the sale. This would nearly eliminate the possibility of oilspills that result from the sale which would affect sea otters in the northern limit of their range. Even though these tracts are apparently north of the current recognized limits of any appreciable concentration of sea otters, there is a probability of 11 percent that an oilspill will reach sea otter range within 30 days once one has occurred. Otters associated with the northern frontal group have been observed as far north as Point Ano Nuevo, which is adjacent to P7.

1.c. Select and conduct studies in coordination with the FWS, as are being developed in the Draft Recovery Plan for the southern sea otter, to determine the impacts of oil contamination on sea otters. The value of such studies is suggested in the DEIS in Alternative 4; the results could be useful in designating future tracts for sale, and in developing methods of avoiding conflicts between hydrocarbon exploration/development/production and sea otters.

2.a. Delay sale of the entire Santa Maria subarea and tracts 104 through 128 of the Santa Cruz subarea until such time as new environmental information has been obtained and technologies are developed such that current levels of oilspills risks to sea otters are not increased, or until the southern sea otter has been delisted and is no longer threatened by potential oilspills.

2.b. Select and conduct studies in coordination with the FWS, as are being developed in the Draft Recovery Plan for the southern sea otter, to determine the impacts of oil contamination on sea otters. The value of such studies is suggested in the DEIS in Alternative 4; the results could be useful in designating future tracts for sale, and in developing methods of avoiding conflicts between hydrocarbon exploration/development/production and sea otters.

A further reasonable and prudent alternative which would reduce but not eliminate the potential for a jeopardy determination resulting from further consultation associated with the development and production phase would be the deletion of those tracts from the northern end of the Santa Maria subarea that are closest to the range of the sea otter, as set out in the BLM alternatives.

It is assumed that whatever production and transportation scenario is finally develop, if production occurs, production activities and transportation routes and methods related to the Santa Maria subarea and P7 of the Santa Cruz subarea would have to be implemented in a manner which would not be likely to jeopardize the southern sea otter.

American Peregrine Falcon (Falco peregrine anatum)

The American peregrine falcon was listed as Endangered on June 2 and October 13, 1970 (35 FR 16047 and 35 FR 8495), and a portion of the peregrine's Critical Habitat was designated in the August 11, 1977, Federal Register (42 FR 40685). This subspecies once occurred widely through much of North America from southern Alaska and Canada, to Northern Mexico. It is migratory in the northern portion of its breeding range, but exhibits less migratory behavior in the southern portion of its range. In California, the species once occurred throughout the State where cliff faces and steep rocky slopes provided suitable nesting locations. The mountains, sea coast, and Channel Islands historically harbored significant populations.

The species has suffered a drastic decline throughout its range primarily due to reproductive failure resulting from pesticide contamination of its avian

prey. Currently, less than 50 known pairs remain in California and the species has been extirpated from the Channel Islands.

Several active eyries (within the past 10 years) are located along the coast from Point Conception to San Francisco. The eyrie located on Morro Rock, Morro Bay, is the most publicized nest site along this reach of coast. Additional nest sites may be found along the coast between Fort Bragg and Eureka. Historic but now inactive eyries are located near Point Reyes, Bodega Bay, and the Farallon Islands.

Considerable efforts are currently being expended toward recovery of this species; chiefly through captive propagation and reintroduction. Natural expansion of American peregrines is anticipated with decreased levels of residual pesticides.

These falcons prey heavily upon coastal birds. The potential impacts on the American peregrine falcon from oil and gas exploration and development/production activities are from the construction of and the disturbance created by onshore activities and the possibility of an oilspill reaching the coast and subsequently oiling the falcons and/or contaminating the food source.

Transient American peregrines may be found in small numbers along the coast, especially during migration and winter periods. We recommend that the majority of the estuaries, bays, lagoons, and rivers have available cleanup equipment to close off these areas within 2 hours of a spill occurrence. This action would minimize the impact of the oil, should it reach the shore.

Bald Eagle (Haliaeetus leucocephalus)

The bald eagle was listed as Endangered in 43 of the contiguous 48 States including California, and Threatened in the remaining five States on February 14, 1978 (34 FR 6233). Critical Habitat has not yet been determined for this species. This large bird occurs from Alaska to Northern Mexico and lives in association with aquatic habitats such as lakes, large rivers, and estuaries.

Bald eagles once nested on the Channel Islands south of the subject proposal, until the mid 1950's. Although nesting by bald eagles occurred in the past along the coast of California between Point Conception and the Oregon border, no active nest sites along this segment of coast are known today.

Wintering bald eagles are found in low numbers along the California coast but apparently with no predictable regularity. However, the present concentrations of California's bald eagle population are located along inland lakes and rivers, and are relatively removed from the impacts of coastal oil and gas development activities.

The potential impacts to the eagle from oil and gas exploration and development/production activities are identical to those of the American peregrine falcon.

Brown Pelican (Pelicanus occidentalis)

The California brown pelican was originally listed as Endangered on October 13, 1970 (35 FR 8320).

The only regular breeding colonies of this subspecies on the Pacific coast are located on Anacapa Island, nearby Scorpion Rock, and Santa Barbara Island, south of the proposed project area. This nesting population is augmented from late July through early November by large numbers of pelicans which regularly disperse north from Mexican waters. These migrants are generally gone by early December. However, it has been recently determined that some may be recruited into the Anacapa breeding population.

Pelicans rarely are found far from salt water, or farther than 20-30 miles offshore. Their major food is small fishes (primarily anchovy), which they capture near the surface by plunge-diving from the air.

During the late 1960's and early 1970's, the Anacapa colony suffered castastrophic nesting failure due to DDT and its derivatives accumulating in reproducing adults.

Following the ban on this pesticide, the fledging rate has continued to fluctuate widely but has not dropped to the low numbers experienced earlier.

Pelicans may be affected by oilspills through contamination of their plumage since they dive for food or drift on the water surface. This may contribute to direct mortality or result in reduced hatchability of eggs oiled from the fouled plumage of an adult bird. Individual pelicans that have been found oiled have responded well to treatment.

It is difficult to predict from oilspill probabilities what the effects of oil activities might be on pelicans. The only known incident of significant numbers of pelicans being oiled was after a spill from the Navy vessel Manatee in August, 1973. Concentrations of light tar washed up on beaches from San Clemente south into Mexico. Twenty to 25 juvenile pelicans were found oiled. In contrast, no pelicans were reported oiled as a result of the January, 1969, Santa Barbara blowout. Judging only from location of the spills, the results should have been reversed, but timing was the determinant in these cases. The San Clemente spill occurred in the late summer when large numbers of pelicans were dispersed throughout the area. The Santa Barbara spill occurred in the winter, following a severe storm, when relatively few pelicans were in the area and fewer still would have been far from shelter. The San Clemente spill indicates that large amounts of oil anywhere within the pelicans' range could cause significant damage at the wrong time of year.

To assist GS in carrying out their responsibility for the conservation of the listed species, the following recommendation is given:

> In accordance with OCS Operating Order No. 7, the proper authorities must be notified in the event of an oilspill occurrence. To insure maximum protection to pelicans, we recommended that when necessary, following an oilspill GS require that oil containment equipment be deployed to bays and estuaries that might be impacted and that are inhabited by brown pelicans.

California Clapper Rail (Rallus longirostris obsoletus)

The California clapper rail was listed in the Federal Register as Endangered on October 13, 1970 (35 FR 16047). Critical Habitat has not been designated for this subspecies. Historically, the California clapper rail inhabited most estuarine marshes of central and norther California. The reduction of coastal estuarine marshes has resulted in the subsequent decline of this species.

Present populations of the California clapper rail are confined to the Greater San Francisco Bay Area and Elkhorn Slough. These rails are nonmigratory. In 1979, a range extension of the California clapper rail was discovered in the Suisun Marsh. This small but viable breeding population represents the furthest inland extension of this species and may indicate environmental changes in the San Francisco Bay-Suisun Marsh complex.

California clapper rails inhabit only those marshlands which are subject to tidal inundation. Areas which have been reclaimed or diked (excluded from tidal action) but remain vegetated with marsh plants, are not used by the clapper rail.

Dense stands of halophytic and brackish aquatic vegetation are relied upon by this bird for escape, cover, and nesting habitat. Adjacent to these areas are sloughs and mudflats along which the rail forages for mussels, annelids, and other invertebrates.

Their dependence upon tidal marshlands render them susceptible to oilspills which are carried with the ebb and flow of the tides and are deposited on the vegetation and mudflats. Rails may become externally contaminated by oil when traveling through oiled vegetation. An adult clapper rail may or may not succumb to oil contamination of its feathers. However, more important is the loss of eggs or broods of young which may occur when oil is transferred from eggs or when a chick's precocial down is oiled. Oil may also destroy the clapper rail's food supply by smothering mussels or from toxic poisoning of invertebrates.

In the event of an OCS related oilspill, the booming of marshlands subject to oiling and the early deplolyment of cleanup equipment will lessen the impacts to the California clapper rail.

The loss of wetlands habitat is the foremost contributor to the decline in clapper rail numbers. Therefore, onshore support facilities should be located either on upland sites or at existing developments.

California Least Tern (Sterna albifrons browni)

The California least tern was listed as Endangered in the Federal Register on October 13, 1970 (35 FR 16047). Critical Habitat has not been designated for this species.

The least tern migrates from Central America each spring to establish breeding colonies on the California coast. It occupies coastal habitats from the Pacific coast of Baja California to south San Francisco Bay from April to September.

The least tern usually chooses a nesting location in an open expanse of sand, dirt, or dried mud close to a lagoon or estuary where food can be obtained. Prey consists of small fish such as the northern anchovy (Engraulis mordax), deepbody anchovy (Anchoa compressa), jacksmelt (Atherinopsis californiensis), topsmelt (Atherinops affinis), California grunion (Leuresthes tenuis), shiner surfperch (Cymatogaster aggregata), California killfish (Fundulus parvipinnis), and mosquitofish (Gambusia affinis). The reduction in numbers of least tern nests have resulted from the loss of feeding and nesting habitat and disruption of nest sites by human-associated activities.

Potential threats to the California least tern from oil and gas activities would be related to oilspills and loss of breeding habitat. These disturbance factors would be associated with oil development and production. The birds could be contaminated by a spill as they dive for food. This may contribute to direct mortality or result in reduced hatchability of eggs oiled from the fouled plumage of an adult bird. Oilspills cause severe damage when they enter coastal wetlands, and could destroy essential feeding areas for the terns.

To assist GS in implementing its responsibility for the conservation of the species, the following recommendation is given:

> The GS should require that the Oilspill Contingency Plans include provisions for the deployment of adequate containment equipment into recognized essential habitat of the species within 2 hours to prevent the entry of an advancing oilspill.

Some of the areas identified in the Recovery Plan as essential habitat for the least tern are: Bair Island; U.S. Naval Air Station, Alameda; Oakland Municipal Airport; Oso Flaco and Dune Lakes; Coyote Hills; Nipomo Dunes; Santa Maria River Mouth and Santa Inez River Mouth. Areas recently identified and not included in the Recovery Plan are: Purisima Point (Vandenberg Air Force Base) and the mouth of the San Antonio River. The GS should maintain liaison with the FWS so they will be aware of any changes or additions to nesting sites for the California least tern.

Salt Marsh Harvest Mouse (Reithrodontomys raviventris)

The salt marsh harvest mouse is a rodent endemic to the marshes of the greater San Francisco Bay area and the Suisun Marsh. The mouse was added to the list of Endangered species on October 13, 1970, Federal Register (35 FR 16047).

The salt marsh harvest mouse is dependent upon salt and brackish marsh vegetation for its existence. The reduction of wetland habitat (more than 80 percent of the original San Francisco Bay marshlands) is the primary reason for this species' decline.

This species of harvest mouse depends upon pickleweed (Salicornia virginica) for cover and to a lesser extent, food. Pickleweed may be found in tidal and non-tidal environments (diked wetlands) and the salt marsh harvest mouse may be found in either environment.

In the event of an oilspill, mice inhabiting tidal marshlands may be subject to oiling, loss of cover, and food. Extremely high flood tides may transport oil many miles within the Bay, covering many acres of prime mouse habitat.

The oilspill risk analysis for OCS related spills projected a 6 percent possibility that a spill of 1000 barrels or larger would enter San Francisco Bay within 30 days after its occurrence. Considering that there were 2765 spills of all sizes and substance, reported by the U.S. Coast Guard in 1979 for San Francisco Bay, the added impacts from a few large OCS spills could be significant. It is recommended that GS require the lessees to deploy the necessary containment and cleanup equipment to marshlands which are subject to impacts from an oilspill to reduce these impacts. Although not anticipated during the exploration phase, the expansion of water related onshore support facilities may impact salt marsh harvest mouse habitat if docks and storage facilities are constructed on wetlands.

U.S. Army Corps of Engineers Bay Model located in Sausalito, California, may help predict projected movement of oil with San Francisco Bay, thereby assisting with the continued conservation of this species.

Biological Opinion

After review of material provided by BLM along with information contained in our files and information from various experts on the listed species, it is my biological opinion that the subject OCS Sale No. 53 and subsequent exploration activities are not likely to jeopardize the continued existence of the American peregrine falcon, the bald eagle, the brown pelican, the California least tern, the salt marsh harvest mouse, or the California clapper rail. Recommendations for the conservation of the above listed species are contained in their individual species accounts.

We wish to express the Service's gratitude to the BLM and GS for their assistance in this consultation and their efforts to meet responsibilities under the ESA. Should you desire clarification of items in this opinion or desire further assistance, we will be pleased to respond promptly.

Lynn A. Greenwalt

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PERSONAL COMMUNICATIONS

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SUBCOMMITTEE RECESS

Senator WEICKER. The subcommittee will recess until next Tuesday, March 17, when we will begin our hearings with the Department of Justice.

[Whereupon, at 10:55 a.m., Wednesday, March 11, the subcommittee was recessed, to reconvene on Tuesday, March 17.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

TUESDAY, MARCH 17, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room S-146, the Capitol, Hon. Lowell P. Weicker (chairman) presiding.

Present: Senators Weicker and Hollings.

DEPARTMENT OF JUSTICE

STATEMENT OF HON. WILLIAM FRENCH SMITH, ATTORNEY GENERAL

ACCOMPANIED BY:

KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION
CHARLES R. NEILL, CONTROLLER
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BUDGET REQUEST

Senator WEICKER. The subcommittee today begins hearings on the appropriations for the Department of Justice. The request for new budget authority for fiscal year 1982 is $2,335,913,000. In addition, we have requests for $89,800,000 and $18,146,000 for pay and program supplementals for fiscal year 1981. When considering the adjusted request for new budget authority, the amount sought in fiscal year 1982 is approximately $10 million below that requested for the current year.

Mr. Attorney General, we welcome the opportunity to hear your statement. Before we begin, I would like to raise two issues which the subcommittee will be exploring with you this morning.

Our Government has labored long to balance the need to combat subversion and terrorism with the need to protect basic civil liberties. To that end, Congress and the executive branch have fashioned safeguards governing U.S. intelligence activities. Recent news reports suggest that the administration is broaching less stringent restrictions against wiretapping and other techniques of domestic surveillance employed by the CIA and others in the intelligence community. These changes concern me greatly. Our very recent history demonstrates that much lawlessness can be accomplished in the name of law and order.

In another area, I am concerned by the $135 million cut in the Justice Department budget associated with the elimination of the Office

of Juvenile Justice and Delinquency Prevention. During this hearing, we will seek assurances that should the Office be dismantled, the goals of the juvenile justice program will continue to be pursued.

Let me say I have had the opportunity to meet with the Attorney General. I am very enthusiastic about working with him in the years ahead. I find him to be very decent and a very professional man. I would hope that the relationship between your agency and this committee would be a very productive one in the years ahead.

Senator Hollings.

Senator HOLLINGS. Thank you, Mr. Chairman.

I will take advantage of your courtesy just for a minute.

CONCERN REGARDING BUDGET REDUCTIONS

Mr. Attorney General, we have a Budget Committee hearing at 10 o'clock. I am for all the cuts. I am supposed to be, as I cosponsor the resolution with Senator Domenici. In order to get $40 to $45 billion in cuts, we will be cutting a lot of programs in our own backyard.

When you talk about increased defense, we need to have some sort of an increase in domestic defense. You come down with the other crowd, cutting the FBI, the drug enforcement, and everything of that kind. That is not realistic at all. You get sheriffs up here begging for more support from the Drug Enforcement Administration. The Reagan program is to take and transmit more of the responsibility to local areas but they have no chance to break into the organizational capability.

In the last 6 months I saw organized drug violators back up a Honduras tanker right off the coast, 200 miles, and thereupon just start off-loading. We think we have 20 percent, but 80 percent got through. Now they are trying to move continuances and everything else under the 90-day rule and, frankly, break down the Federal court system. I have had three more judges put on. We are not going to break down. We are going to beat them.

You look at the articles yesterday in Newsweek and Time about organized crime. I can remember Robert Kennedy and "The Enemy Within." He was my good buddy. You have organized crime when you have something worth organizing. That is the drug thing. The administration casually says, "We are going to give that back to the States," just like the FBI and the bank robberies and everything else. It has us going in two different directions.

We say we are doing something about it. We are using all the rhetoric. I just don't think we can take some of these cuts in this area, such as actual enforcement itself. I wish you would review these budgets. We will have to get on Dave Stockman because we understand how you review them and the FBI, and Stockman ruled them out, or what have you, with no regard for the sort of problems that exist. He can't understand all of the problems. He is a brilliant fellow, but he can't get a feel and touch like we have on this subcommittee. We have been working for years and years on this. We have had to persuade others to hold the line on law enforcement. We didn't do too good a job back then. They cut back in the last few years by at least 300 FBI agents. You have a bigger crime problem on the front page and everything else, but you are cutting back on agents and what have you. That is the thing that

really disturbs me. You don't have enough agents there for drug enforcement, with the coordination and what have you, and yet we say we are doing something about it. Everybody is running around making those same statements, for 20 years. I can show you some of them. Are we really going to do this? And yet they are cutting, cutting, cutting. There is no chance in the world to get on top of this thing once and for all unless we put some increases in this budget.

Thank you.

Senator WEICKER. General.

OPENING STATEMENT

Attorney General SMITH. Thank you very much, Mr. Chairman, Senator. This statement addresses some of the questions that you have raised, but probably not in the detail you would like. We can discuss those after I have concluded.

I am pleased to appear before you today to discuss the 1982 budget request for the Department of Justice. As you know, this is my first opportunity to testify before this subcommittee, and I look forward to working with you, Mr. Chairman, and the other members in the years ahead.

The total 1982 request of approximately $2.3 billion and 52,656 positions is a decrease of approximately $10 million and a decrease of 3,023 positions from the anticipated 1981 levels, as revised. A more helpful comparison may be the relationship of our new staffing level to our current on-board employment. The new level will require the Department to reduce its current staff over the next 18 months by approximately 1,600 employees. In comparison to the previous administration's 1982 budget estimates, our 1982 request represents a decrease of $231 million and a decrease of 2,113 positions.

Our request is founded on commitments of this administration: First, Federal spending must be reduced in order to minimize inflation, insure the Nation's economic recovery, and balance the budget in 1984. Second, essential to these economic efforts is a reduction of the Federal workforce, where possible, and an increase in productivity to maintain the effective execution of Federal programs. Third, every Federal agency must share in the necessary reductions, consistent with its mission and program responsibilities. Fourth, Federal enforcement priority will be given to such areas as organized crime, white-collar crime, and narcotics trafficking. And, as you know, I recently announced the formation of the Attorney General's task force to assist me in formulating strategies in the extremely critical area of violent crime. And fifth, Federal justice subsidies to State and local justice programs should be reduced or eliminated where State and local agencies are capable of assuming greater responsibility. Needless to say, Mr. Chairman, the establishment of priorities often demands that hard choices and difficult tradeoffs be made. I believe our request reflects those choices.

Our 1982 request represents a decrease in resources. However, I believe that it does not jeopardize the essential missions of this Department. This administration is as firmly committed to an effective Federal criminal and civil justice effort as it is to improving this Nation's defense capability.

Despite the need for budget stringency, we are maintaining or enhancing those programs of highest priority to the Department. In the law enforcement and criminal prosecution area, we are maintaining the fight against organized crime and white-collar crime and, in certain instances, we are increasing resources for these programs. We are also increasing our resources to conduct foreign counterintelligence and combat high level narcotics trafficking.

In other areas there will, of course, be reductions. In corrections, for example, the increase in population caused by the Cuban entrants has necessitated a delay in the closing of the facilities at McNeil Island and Atlanta. I do, however, intend to continue the phase-down of those institutions.

There are also programs for which we are not proposing resources in this budget request. We will no longer have the funds to continue the U.S. trustees programs and the juvenile justice program. I shall address those in more detail later on.

During the next week, Department officials will appear before you to answer specific questions you may have on programs under their direction. At this time, I would like to briefly highlight our total resource request in support of our program plans for 1982.

LITIGATION

Our request for general legal activities represents an 8-percent reduction in authorized positions from the previous administration's request. However, the effect of this decrease will not be nearly as adverse as the magnitude of the numbers suggests. First, the 1982 position level reflects the current on-board strength of the legal activities. Neither the quality nor quantity of our current litigative efforts should suffer. Second, the President's policy on reducing the role of the Federal Government in a number of social, economic and regulatory programs may in the long run lighten the Department's civil litigation workload arising from those programs. Third, I believe the current level of criminal litigation resources is sufficient to meet our priorities.

With more efficient use of our criminal prosecutors and support staff we will continue to emphasize these priorities. Finally, increased application of modern technology to the management of the Department's litigation will produce savings and efficiencies. Therefore, our request includes a $1.2 million increase for our litigation support activities.

The fiscal year 1982 request for the Antitrust Division will remain unchanged. This administration is, as you know, strongly committed to the integrity of the free enterprise system and, therefore, to the vigorous enforcement of antitrust laws. By not imposing reductions here, we will maintain an appropriate level of Federal activity in this area. In addition, we are planning to propose that the Antitrust Division appropriation be merged into the general legal activities appropriation to provide maximum flexibility in utilizing our litigation resources.

The administration also has proposed the elimination of the U.S. trustees in the Department of Justice program at the end of fiscal year 1982. The allocation of Department of Justice resources to this program has not been accompanied by a decrease in resources in this area by the Federal judiciary. Since the relationship between the Department and

the judiciary is unique, I will be talking to the Chief Justice on ways to work out any difficulties which may result from a failure to fund the trustees program in the Department.

We are requesting a modest reduction in authorized positions for the U.S. attorneys. As with the legal divisions, the reduction should have minimal impact on the U.S. attorneys' effectiveness, since the 1982 position levels would be about the same as the current on-board employment level.

The previous administration proposed the establishment of an autonomous judicial system in the government of the District of Columbia. It called for full authority by the District government over the prosecution of violations of laws of the District of Columbia, the custody of prisoners convicted of local violations, and the security of the D.C. Superior Court. I am reviewing this request made by the previous administration, but I have a particular concern that every possible issue regarding the transfer of the U.S. attorney's responsibility and authority for the prosecution of all D.C. felony offenses and the most serious misdemeanors be fully considered. If we are satisfied that such a comprehensive review supports the transfer of these functions, we shall propose the necessary legislation to Congress.

LAW ENFORCEMENT

The Department's request for the Federal Bureau of Investigation demonstrates a strong administration commitment to our law enforcement priorities. For 1982, we are asking for additional resources for the FBI's foreign counterintelligence program. The foreign counterintelligence program directly affects this Nation's security and the requested increase conforms with the administration's overall policy to improve national security.

In addition, funding for undercover and aircraft operations are requested. These increases will do much to facilitate the investigation, prosecution, and conviction of major offenders in high priority programs. Increased resources are being requested to improve the FBI's field investigative capabilities, to provide for a substantial acquisition of automated data processing and telecommunications equipment, to modernize and improve the FBI's information and communications systems, and to purchase automobiles in need of replacement. To some extent, the proposed increases are offset by decreases in lower priority field investigative programs.

With regard to the Drug Enforcement Administration, we are requesting increases in the domestic enforcement and foreign cooperative investigations programs to bring greater resources to bear on the Southwest Asian heroin problem and against the financial assets of major narcotics traffickers. Increased resources are also requested for the aircraft and vehicle replacement program and to provide security for DEA's radio transmission and wire communication. Each of these increases is needed to improve both operational readiness and agent safety. While the budget request for DEA reflects some personnel reductions in most of its other programs, this will result in reduced activity only in low priority and regulatory programs. Only the diversion investigative units program would be eliminated.

The budget request for the U.S. Marshals Service includes a modest increase in the area of automated data processing. This will enable the Service to develop a multipurpose ADP system to improve information available to the Service management and, also, enhance the computerized record systems of the witness security program. In addition, additional funds are requested to expand the prisoner movement capacity of the national prisoner transportation system. Finally, increased resources are requested for the replacement and upgrading of communications equipment and the establishment, on a pilot basis, of an informant fund. The latter is related to the U.S. marshals' increased involvement in the location of Federal fugitives.

Offsetting these increases are reductions associated with the continued phase-out of personnel associated with the service of private process. A second area of reduction is in the court security program. Court security is currently provided to the Federal judiciary in civil and criminal proceedings. We believe it is not necessary to provide additional security during nondangerous civil proceedings.

Although the Congress reduced resources for the service of private process in 1981, the Congress did not change the substantive law which requires the U.S. marshals to serve private process. Again this year, the Department is requesting that a substantive change to the law be made to relieve the U.S. marshals from that responsibility. We will be including a section in the fiscal year 1982 authorization bill to accomplish this. Also, the U.S. Marshals Service currently is under court order in 78 Federal judicial districts to provide marshals in the courtroom for all proceedings, whether civil or criminal. I also plan to discuss these two issues with the Chief Justice.

The third area of reduction in the Marshals Service relates to the legislative proposal which would remove the responsibility of the marshals for providing "sheriff-like" support to the District of Columbia Superior Court. Under this proposal the D.C. government would accept full authority over the handling of prisoners convicted of local violations and would be responsible for providing security to the D.C. Superior Court. This proposal is part of a possible legislative proposal to which I referred earlier.

IMMIGRATION AND NATURALIZATION

In the area of immigration, the administration believes that there are a number of major issues to be examined before any initiatives are proposed in the budget. There is, for example, reasonable cause to believe that many immigration problems will not respond simply to increased resources. In some cases, decisions concerning the management of current resources may be of greater significance. We would like to allow the new Commissioner of the Immigration and Naturalization Service to have an opportunity to consider carefully all of the available options. Of course, the final recommendations of the Select Commission on Immigration and Refugee Policy must be thoroughly reviewed and policy recommendations made to the President. This, as you know, will be the focus of a special interagency task force established by the President. I chair that task force. We will report our recommendations to the President in early May.

Therefore, the request for INS represents no new policy initiatives. About half of the requested decrease of 1,355 positions reflects our decision not to fill vacant positions which are currently authorized. In those instances where the reductions may affect on-board employment levels, normal attrition should minimize the potential for a reduction-in-force.

In the aggregate, I do not believe the reductions proposed for INS are severe. Our overall employment target for INS in 1982 calls for a net reduction of just over 300 people compared to current on-board levels. In fact, certain INS enforcement programs could actually gain in employment strength—for example, border patrol and antismuggling—while we achieve the overall planned reduction in programs delivering lesser benefits. For example, relatively few apprehensions and deportations result from the activities of the programs targeted for reduction, given the current staffing and funding levels being devoted to these programs. It is my intention to review closely with the new Commissioner the most effective way to allocate the new resource levels for INS. Since some programs in INS are to be allowed some growth in our proposal, I believe we will have considerable flexibility. The budget for INS does include a program increase of about $5 million for automated data systems, operation of a service processing facility in Miami for Haitian refugees, and repair and alteration of several INS facilities.

TASK FORCE ON VIOLENT CRIME

Finally, Mr. Chairman, I have as you know just announced the formation of a task force on violent crime, composed of individuals with distinguished backgrounds in criminal justice. I have created this new advisory body because of the conviction of this administration that the problem of violent crime, although primarily falling within the jurisdiction of State and local law enforcement agencies, has now reached such an alarming level that leadership on the part of the Federal Government is both desirable and necessary. The new task force will be considering and recommending ways in which the Department of Justice can appropriately exercise that kind of leadership and provide assistance in this area of critical importance to the American people. I look forward to working with the Congress as we begin to address, through this task force and through subsequent efforts, the debilitating problem of violent crime.

CORRECTIONS

Except for the influx of approximately 1,700 Cubans in the spring of 1980, the Federal prison population has stabilized. This increase in population caused by the Cuban entrants has resulted in the delayed closing of the McNeil Island, Washington facility and has slowed the phase-down of the Atlanta, Ga. penitentiary. McNeil Island will be leased to the State of Washington for housing of its prisoners beginning this summer. To ameliorate regional overcrowding conditions in the detention area, additional resources are requested to activate a Federal Detention Center in Tucson, Ariz. We are also proposing reductions in several programs which will more than offset the increases associated with the Tucson facility.

For the buildings and facilities program, increases are requested to begin implementing both departmental and American Correctional Association standards, continue energy conservation activities, convert the Leavenworth, Kans. penitentiary to a smaller, more modern correctional facility, and undertake and/or complete essential rehabilitation and renovation projects at various Federal facilities.

STATE AND LOCAL ASSISTANCE

The Department's budget request for the Office of Justice Assistance, Research, and Statistics proposes that funding for the juvenile justice program be eliminated. The previous administration had requested $136 million for this program. Our proposal to eliminate funding does not mean that this administration believes that the juvenile justice program was not a worthwhile effort. We believe that the juvenile justice program is primarily designed to ensure that juveniles are not forced, through a variety of circumstances, into a criminal justice system in which they do not belong. Such objectives can, and should, be met through block grant programs administered by the Department of Health and Human Services and through efforts at the State and local level.

In the research and statistics appropriation, the fiscal year 1982 request does include resources for the National Institute of Justice and the Bureau of Justice Statistics.

OTHER DEPARTMENTAL REQUIREMENTS

In conclusion, our 1982 budget request reflects some reductions in resource levels for the staff offices of the Department. The general administration request includes the elimination of the State and local drug grant program and the elimination of $1.3 million for a series of special studies. It also provides for the transfer of the Office of Justice Assistance, Research, and Statistics audit function to the Department, consistent with the phasing out of the Law Enforcement Assistance Administration.

Finally, the request also reflects my decision to reorganize the Department to improve its efficiency and the overall coordination of Department policy. In reducing overhead we have proposed the elimination of 58 positions in general administration.

ADDENDUM TO STATEMENT

This concludes my statement, Mr. Chairman. I have a more detailed addendum to my opening remarks which, with your permission, I offer to be entered in the record.

I shall be pleased to respond to any questions you or the members of the subcommittee may wish to ask.

Senator WEICKER. Thank you very much, General.

[The addendum follows:]

ADDENDUM TO STATEMENT OF WILLIAM FRENCH SMITH

DEPARTMENT OF JUSTICE FY 1982 BUDGET REQUEST

The 1982 budget request for the Department totals $2,335,913,000 and 52,656 positions. This request is $9,935,000 and 3,023 positions less than the levels anticipated in 1981. Adjustments to base programs result in a net increase of $93,532,000 and 12 positions which is offset by net program reductions of $103,467,000 and 3,035 positions. Included in the program reductions is $13,001,000 and 314 positions for a legislative proposal that would relieve the U.S. Attorneys and U.S. Marshals of the responsibility for servicing the District of Columbia Superior Court. This addendum highlights the more significant changes within each appropriation.

GENERAL ADMINISTRATION

The request for General Administration is for $37,653,000 and 723 positions, a net increase of $2,895,000 and 28 positions over the anticipated 1981 level. This net increase reflects adjustments to the base of: (1) $3,466,000 and 70 positions for the transfer of audit and investigation functions from the Office of Justice Assistance, Research, and Statistics (OJARS) to the Justice Management Division (JMD); (2) a reduction of $475,000 for the transfer of the INTERPOL function to the Criminal Division; and (3) uncontrollable increases of $1,825,000. The increases for adjustments to the base are partially offset by a net program decrease of $1,921,000 and 42 positions. Non-personnel related program increases of $2,208,000 include $1,288,000 to provide increased research and reference capacity to the Department's Library through expanded use of automated information banks, creation of an automated research materials acquisition system, and conversion of existing materials to machine-readable form. The combined impact of these changes will significantly enhance the Library's support to the Department's litigating divisions. The remaining $920,000 will enable the Department to purchase special secure telephone devices for use in communicating with the United States intelligence community, establish a paralegal and SES training capability, and improve internal accounting operations, budget and planning through further development of the Department's Financial Management Information System. The program decrease of $4,129,000 and 42 positions is associated with the elimination of the State and Local Drug Grant Program, special studies, and a Departmental reorganization designed to improve efficiency and coordination of Department policy.

UNITED STATES PAROLE COMMISSION

The U.S. Parole Commission (USPC) request is for $6,461,000 and 172 positions, which represents an uncontrollable increase of $330,000 and a decrease of six positions. The decrease of six positions is the result of the Administration's intention to reduce employment under the President's Program for Economic Recovery.

GENERAL LEGAL ACTIVITIES

The request for the General Legal Activities (GLA) is $127,136,000 and 2,759 positions, a net increase of $6,170,000 and a decrease of 169 positions from the anticipated 1981 level. Of the dollar increase, adjustments to the base account for $4,663,000 which is comprised of (1) $475,000 associated with the transfer of the INTERPOL function from the General Administration appropriation to the Criminal Division, (2) uncontrollable increases of $5,178,000, and (3) non-recurring decreases of $990,000 for FY 1981 supplementals. Program changes represent a net increase of $1,507,000 for non-personnel requirements and include a reduction of 169 positions resulting from the Administration's intention to reduce Federal Employment under the President's Program for Economic Recovery. The program increase includes $1,187,000 for litigation support in three legal divisions. Civil Division's increase of $346,000 will be applied to the Division's programs for word-processing equipment, improvement of productivity, and enhancement of litigation-management techniques. The increase of $444,000 for the Land and Natural Resources Division will enhance currently existing ADP operations and permit long-range planning and systems development necessary to support litigation of large cases, especially large-document indexing, financial and workload analyses and transcript search. A $397,000 increase for the Civil Rights Division will permit expansion of litigation support to all Division programs, and enable the Division to respond to an inordinately large number of voting redistricting and reapportionment proposals arising from the 1980 Census. The remaining $320,000 of the program increase is requested in the Criminal Division for INTERPOL. Of that amount, $295,000 is for a case-tracking system which is vital to the exchange of international criminal justice information and $25,000 is for an expected increase in dues for the United States' membership in INTERPOL in 1982.

The reduction of 169 positions is distributed among GLA organizations as follows:

	Pos.
Office of the Solicitor General	- 2
Tax Division	-33
Criminal Division	-64
Civil Division	-20
Land and Natural Resources Division	- 2
Office of Legal Counsel	- 2
Civil Rights Division	-46
Total	-169

The effect of this decrease on the conduct of the Department's litigation will not be as great as the magnitude of the numbers suggests because the revised position levels approximate the current actual on-board strength of the legal activities. Therefore, neither the quality nor the quantity of the Department's litigative efforts should suffer.

FOREIGN CLAIMS SETTLEMENT COMMISSION

The request for the Foreign Claims Settlement Commission is $705,000 and 18 positions, which reflects a decrease of $145,000 from the anticipated 1981 level. Uncontrollable increases of $44,000 are offset by a decrease of $189,000. The program decrease reflects a planned phasing-down in the Commission's workload primarily due to the completion of the adjudication of all claims against the German Democratic Republic.

In 1982, the Foreign Claims Settlement Commission will continue to adjudicate the claims of American citizens whose properties were nationalized, appropriated, or otherwise taken by the Socialist Republic of Vietnam. In addition, the Commission will continue to provide information and advice to the public and Federal agencies on past and pending claims programs.

ANTITRUST DIVISION

The 1982 budget request for the Antitrust Division is $49,566,000 and 897 positions, an increase of $3,135,000 and a decrease of 42 positions from the anticipated 1981 level. The funding increase includes adjustments to the base of $2,518,000 for uncontrollable items, a net program increase of $617,000, and a decrease of 42 positions.

The program increase of $670,000 is requested for computer support for several antitrust investigations and litigation under the Clayton and Sherman Acts, offset by a decrease of $53,000 in the Division's Administrative Services program.

A decrease of 42 positions is a result of the Administration's intention to reduce Federal Employment under the President's Program for Economic Recovery. Funding for these positions and related workyears were reduced in 1981.

The Division anticipates additional workload in 1982 if the proposed reductions in the Federal Trade Commission are consummated. No additional funding has been requested to handle the possible increase in workload resulting from this action.

U.S. ATTORNEYS AND MARSHALS

The 1982 request for the U.S. Attorneys and Marshals, including the Trustees, is $278,205,000 and 5,959 positions, which is a decrease of $7,418,000 and 842 positions from the anticipated 1981 level. The request includes net uncontrollable increases of $9,561,000, program increases of $6,723 and 4 positions and program decreases of $23,702,000 and 846 positions. The program increases include $4,049,000 for non-personnel increases in the U.S. Attorneys and $2,674,000 and four positions for the U.S. Marshals Service. Program reductions involve no dollars and 112 positions for the U.S. Attorneys, an amount of $5,351,000 and 207 positions due to the elimination of the U.S. Trustees program, a reduction of U.S. Marshals programs of $5,350,000 and 213 positions and a legislative proposal to relieve the U.S. Attorneys and U.S. Marshals of the responsibility for servicing the District of Columbia Superior Court which results in a reduction of $13,001,000 and 314 positions.

UNITED STATES MARSHALS SERVICE

The 1982 request for the U.S. Marshals (USMS) is $97,091,000 and 1,880 positions which is a decrease of $6,830,000 and 297 positions from the 1981 anticipated level. The reduction includes net decreases in adjustments to the base of $299,000, program increases of $2,674,000, and four positions and program decreases of $9,205,000 and 301 positions. The program increase of $2,674,000 and four positions includes: (1) an amount of $1,000,000 which will enable the USMS to acquire surplus aircraft to expand the National Prisoner Transportation System, a system designed for the long distance transportation of federal prisoners; (2) an increase of $721,000 for replacement of radio equipment, the establishment of a pilot informant fund, and the continuation of advanced training courses at the Federal Law Enforcement Training Center, at Glynco, Georgia, for witness security inspectors, community detention and enforcement specialists and Deputy U.S. Marshals (DUSM); (3) an increase of $953,000 and four positions to expand and increase the capability of the Witness Security centralized data information center containing the records of protected witnessses and; (4) the continued development of the SENTRY program, a computerized on-line information system concerning the status of sentenced and unsentenced federal prisoners under the jurisdiction of the Attorney General.

The program reductions of $9,205,000 and 301 positions consists of three basic items: First, the previous Administration has proposed a decrease of $3,855,000 and

88 positions as a part of a legislative proposal to transfer the responsibility for support provided the D.C. Superior Court from the USMS to the D.C. government. Specific responsibilities proposed for transfer to the District government will be sheriff functions of local concern such as court security, service of process, and the handling of prisoners. As indicated earlier, I am reviewing this proposal and will determine whether to propose the necessary legislation to implement the proposal. The second major decrease of $3,502,000 and 158 positions is the result of the Administration's intention to reduce federal employment and results primarily from a decision to eliminate the attendance of Deputy U.S. Marshals at non-dangerous civil proceedings. The remaining program reduction of $1,848,000 and 55 positions is associated with reduced operating levels for service of private process and elimination of unfilled positions in the supervision of unsentenced prisoners program.

U.S. ATTORNEYS

The 1982 request for the United States Attorneys is $180,844,000 and 4,079 positions, an increase of $4,763,000 and a decrease of 338 positions from the anticipated 1981 level. This request reflects an increase in the adjustments to the base of $9,860,000 for uncontrollable items, program increases of $4,049,000, program decreases for 112 positions and a legislative proposal to relieve the U.S. Attorneys of the responsibility for servicing the District of Columbia Superior Court which results in a reduction of $9,146,000 and 226 positions.

An increase of $555,000 in the civil litigation program is requested for additional word processing equipment which will be used to produce correspondence and documents relative to debt collection activities. In the administrative services program, increased funding of $3,494,000 is requested for equipment and contractual services for the continued implementation of the U.S. Attorneys' case management information system.

A decrease of 112 positions is a result of the Administration's intention to reduce Federal employment under the President's Program for Economic Recovery. The reductions by program are as follows:

Program	Positions
Federal appellate activity	-10
Criminal litigation	-65
Civil litigation	-37
TOTAL	-112

The effect of this decrease on the conduct of U.S. Attorneys' litigation will not be as great as the magnitude of the reductions suggests because the

revised position levels approximate the current actual on-board strength of the U.S. Attorneys.

U.S. TRUSTEES

The 1982 request for the United States Trustees is $270,000 and no positions, a decrease of $5,351,000 and 207 positions from the anticipated 1981 levels. The proposed reduction will eliminate the U.S. Trustees pilot program which had the responsibility for administering bankruptcy cases in 18 judicial districts. Funding of $270,000 is necessary to close out the program in 1982.

SUPPORT OF U.S. PRISONERS

The 1982 request for the Support of United States Prisoners totals $25,600,000, which is an increase of $898,000 over the anticipated 1981 levels. The increase will expand the amount of detention space available to the Federal Government in local detention facilities in the higher cost metropolitan areas.

FEES AND EXPENSES OF WITNESSES

The 1982 request for the Fees and Expenses of Witnesses appropriation is $29,421,000, an increase of $2,421,000 over the 1981 appropriation. The increase includes $921,000 in uncontrollable and $1,500,000 in program increases.

A program increase of $500,000 is requested for the Protection of Witnesses activity in order to provide protection for witnesses that have become an important part of the Department's organized crime program. The remaining $1,000,000 program increase is requested for the Expert Witnesses portion of the appropriation; the growing number of more complex cases necessitates the increased use of expert witnesses whose technical and scientific knowledge supports the defense or prosecution of federal cases.

COMMUNITY RELATIONS SERVICE

The request for the Community Relations Service (CRS) is $5,313,000 and 88 positions, which represents a decrease of $142,000 and 23 positions. This decrease results from the Administration's intention to reduce employment under the President's Program for Economic Recovery. With these reductions CRS will concentrate its effort primarily on cases relating to the administration of justice, e.g., police use of excessive force and police community relations. While it will be necessary to be more selective in entering cases in areas such as housing, employment and school desegregation, CRS will still be making important contributions to the resolution of conflicts that may potentially result in significant community unrest.

FEDERAL BUREAU OF INVESTIGATION

The request for the Federal Bureau of Investigation (FBI) totals $739,013,000 and 19,421 positions, an increase of $56,730,000 and 115 positions over the anticipated 1981 level. The requested funding includes net adjustments to the base of $28,153,000 and 12 positions and a net program increase of $28,577,000 and 103 positions.

The proposed level for the FBI represents a continued emphasis on crime problems which have a national dimension and which cannot be adequately addressed at the state and local level. The most significant program change is an additional 97 positions and $4,770,000 for other field investigative programs. In addition, a total of $2,545,000 is requested for the organized crime and white-collar crime program to provide increased resources for undercover operations and aircraft surveillance in support of the FBI's investigative activities in these high priority areas.

In order to assure the necessary expertise to investigate sophisticated white-collar crime and computer fraud, increased resources are requested for the FBI's training program. The total increase of 16 positions and $1,363,000 will enable the FBI to provide more training and will provide necessary maintenance staff at the FBI Academy. An increase of 24 positions and $2,644,000 will provide the required staff and equipment for the Forensic Science Research and Training Center which is scheduled to open this spring. This facility will improve the quality of the FBI's forensic services to the state and local law enforcement community which should contribute immeasurably to law enforcement efforts in the solution of crime--in many cases violent crimes.

Other major items of increase for the FBI are for ADP, vehicle replacement, equipment and telecommunications programs. These increases include $9,012,000 for the ADP program which will provide funding to meet existing requirements for maintenance and supplies. More imporantly they will allow the FBI to expand its information systems and to modernize its communications network in support of its field investigative programs. Additionally, increased resources totaling $6,835,000 are requested to purchase replacement automobiles and radio communications equipment. Increased funding of $1,275,000 is requested to purchase equipment for the Automated Identification Division System effort.

The resources for these increases were made available, in part, by a shift of personnel to these high priority investigative programs from those of lesser urgency in which workload has declined or which can be effectively

investigated by another agency. Accordingly, reductions of 46 positions and $1,413,000 are proposed to lower priority field investigative programs, and a reduction of $504,000 was also made to the headquarters coordination program.

IMMIGRATION AND NATURALIZATION SERVICE

The 1982 request for the Immigration and Naturalization Service (INS) totals $363,376,000 and 9,531 positions which represents a net reduction of $8,192,000 and 1,355 positions below the anticipated 1981 level. The overall dollar reduction is comprised of uncontrollable increases of $17,619,000 which are offset by non-recurring decreases of $10,137,000 and net program decreases of $15,674,000. About one half of the 1,355 reduction in authorized positions are against unfilled positions and in those instances where the reductions impact on on-board employment levels, normal attrition should minimize any potential reduction-in-force. These reductions are part of the President's Program for Economic Recovery and are directed at programs which can best sustain the reductions. Renewed emphasis will be placed on increased efficiency and elimination of unnecessary functions.

Program increases of $5,076,000 are requested for non-personnel related items and are comprised of: (1) an increase of $2,200,000 for the Detention program which will allow INS to operate the Krome (North) detention facility in Miami to process Haitians; (2) an increase of $1,073,000 for the Construction and Engineering program will allow INS to provide needed repairs and alterations to service-owned facilities; and (3) an increase of $1,803,000 will allow INS to keep the Non-immigrant Document Control System current, expand its automated management systems to include property, fleet, facilities and procurement modules and make required payments to the Justice Data Center.

Offsetting these increases are personnel-related program decreases totaling $19,687,000 and 750 positions comprised of: (1) a decrease of 100 positions, $5,033,000 and 66 workyears for the Inspection program ($3,500,000 is a reduction associated with a proposal to repeal 1931 Act overtime and replace it with 1945 Act overtime); (2) a decrease of 228 positions, $4,327,000 and 120 workyears for the Investigation program; (3) a decrease of 300 positions, $6,150,000 and 219 workyears for the Adjudications program; (4) a decrease of 72 positions, $1,112,000 and 25 workyears for the Status Verification program; (5) a decrease of 50 positions, $551,000 and 36 workyears for the Records program and (6) decreases of $2,202,000 in the Border Patrol (Immediate Border) program and $312,000 in the Communications Systems program related to equipment funds associated with positions authorized in FY 1981

which will not be filled. The remaining program decrease of $1,063,000 results from reduced travel for training and a proposed amendment to the Cargo Preference Act which would provide for the shipment of household goods on foreign flag vessels.

It is also important to note that 605 positions, which are generally unfilled, are being reduced in FY 1982 for which no dollar reduction is possible. Although $10,842,000 and 312 workyears would have accompanied this reduction, the dollars have been used in 1981 and 1982 to absorb a portion of the October 1980 pay increase.

DRUG ENFORCEMENT ADMINISTRATION

The 1982 request for the Drug Enforcement Administration (DEA) is $228,524,000 and 3,897 positions, which is an increase of $12,325,000, but a decrease of 195 positions from the 1981 appropriation anticipated. Adjustments to the base account for a net change of $12,575,000 which includes net uncontrollable increases of $13,656,000 offset by a transfer of $1,081,000 associated with DEA's program to measure drug abuse to the National Institute of Drug Abuse. Program changes represent a net decrease of $250,000 and 195 positions and result from program increases of $6,306,000 and 36 positions which are offset by program decreases of $6,556,000 and 231 positions.

The program increase of $6,306,000 and 36 positions consists of $1,565,000 and 26 agent accountants to establish a strong financial investigations program; an increase of $1,101,000 and 10 positions to support major Southwest Asian heroin investigations; funding of $1,900,000 to establish vehicle and aircraft replacement programs; funding of $1,000,000 to accelerate implementation of DEA's radio voice privacy system; and an amount of $740,000 to acquire data encryption devices for DEA's teleprocessing system.

Offsetting program decreases of $6,556,000 and 231 positions are a result of the Administration's intention to reduce federal employment under the President's Program for Economic Recovery. Reductions were made in virtually every other DEA program. However, the Diversion Investigative Units program is the only program to be eliminated (24 positions and $1,404,000 reduction.) Residual funding remains in this program for 1982 in order to meet commitments under existing cooperative agreements. The other major decrease is made to the State and Local Task Forces program (94 positions and $2,519,000). This decrease may necessitate the closing of four or more of the smaller task forces.

Under this budget request, DEA will place its emphasis upon programs of primary federal responsibility while attempting to meet all major operational commitments within available resources. Despite the net decrease in positions, DEA will

place greater resources against major foreign and domestic traffickers. In addition, DEA will dedicate more personnel to the complex investigation and analysis of financial transactions in order to subject a larger share of trafficker assets to forfeiture.

FEDERAL PRISON SYSTEM

The Federal Prison System's (FPS) 1982 resource level considers the stabilization of the federal prison population. The declining population growth trend of recent years is largely attributed to the prevailing federal investigative and prosecutorial policy of the past several years which has focused on "quality national cases" versus "larger-volume but lower priority cases." The latter are often covered by concurrent state and local jurisdiction. The Administration expects the population level to be more stable in 1982 rather than to continue in a downward trend. We believe this will occur because of the Administration's intent to provide a leadership role and demonstrate its commitment to countering instances of violent crime by marginally increasing our investigative and prosecutorial effort in such cases involving concurrent federal jurisdiction. During 1980 and continuing into 1981, the FPS has been able to house approximately 1,700 Cuban entrants while remaining under overall prison capacity by about one percent as of the end of February 1981. The 1982 request totals $383,784,000 in budget authority and 8,977 positions compared to the anticipated 1981 request of $361,868,000 and 9,225 positions. This resource level is distributed among "Salaries and Expenses", "Buildings and Facilities", and the "National Institute of Corrections" appropriations.

SALARIES AND EXPENSES

The FY 1982 request for "Salaries and Expenses" is $358,282,000 and 8,922 positions; this represents a net increase of $16,328,000 over the FY 1981 anticipated appropriation and a net decrease of 238 positions. The net dollar increase is comprised of $21,117,000 in uncontrollable costs, which are offset by non-recurring decreases of $690,000 and net program decreases of $4,099,000.

Program increases of $2,502,000 and 28 positions are requested and they are: (1) $1,909,000 and 28 positions spread across several programs to activate the Tucson, Arizona, Federal Detention Center in 1982; (2) an increase of $500,000 for on-line SENTRY program costs; and (3) an increase of $93,000 to enhance existing medical programs.

Offsetting these increases are personnel-related decreases totaling $4,444,000 and 266 positions spread over 10 programs which are the result of the Administration's intention to reduce federal employment under the President's Program for Economic Recovery. Specifically, the reductions are as follow: (1) a reduction of 71 positions and $461,000 associated with the closure of all farm operations because a FPS study has concluded that the value of farm production is minimal when related operational costs are considered; (2) a reduction of 24 positions in the medical services program; (3) a reduction of 101 positions and $1,504,000 distributed among several programs will maintain employment in 1982 at the approximate level of current employment; (4) a reduction of 31 positions and $1,634,000 would be achieved by terminating FPS' operation of Federal Community Treatment Centers and replacing the Centers with state, local or private contractor support; and (5) a reduction of 39 positions and $845,000 results from a decision to cancel final implementation of the functional unit management concept at two institutions.

Additionally, the request includes non-personnel related program decreases totaling $2,157,000. These decreases represent cost savings realized from the decline in the federal prison population (excluding the approximately 1,700 Cubans currently being housed in federal correctional facilities) which are reflected in three program areas--Contract Confinement ($1,500,000) Contract Community Treatment Centers (530,000) and Food and Farm Services ($127,000).

NATIONAL INSTITUTE OF CORRECTIONS

The FY 1982 request for the "National Institute of Corrections" appropriation is $11,771,000 and 30 positions. This reflects an increase of $1,877,000 over the FY 1981 anticipated appropriation, and is comprised of $984,000 in uncontrollable increases and $893,000 in program increases which will provide increased technical assistance and training to state and local agencies.

BUILDINGS AND FACILITIES

For "Buildings and Facilities" the request is $13,731,000 and 25 positions, representing a net increase of $3,711,000, and a decrease of 10 positions. The changes are comprised of an increase of $696,000 for uncontrollables, a decrease of $4,060,000 due to non-recurring costs for the rehabilitation of existing structures and utilities systems, and proposed program increases totaling $7,075,000. The FY 1982 program changes include a decrease of 10 positions to align 1982 employment with approximate current

on-board employment, and an increase of $7,075,000 to fund numerous projects. The increase will enable FPS to undertake the following initiatives: (1) $2,125,000 to start important energy conservation projects; (2) $1,700,000 to begin the first phase of a three phase conversion of the Leavenworth, Kansas, Penitentiary to a smaller, more modern facility; (3) $1,215,000 to start or complete utilities rehabilitation; and (4) $2,035,000 to make improvements to existing structures.

OFFICE OF JUSTICE ASSISTANCE, RESEARCH, AND STATISTICS

The Justice System Improvement Act of 1979 established four organizational entities: The Office of Justice Assistance, Research, and Statistics (OJARS), the Law Enforcement Assistance Administration (LEAA), the National Institute of Justice (NIJ), and the Bureau of Justice Statistics (BJS). In addition, the recent reauthorization of the Juvenile Justice and Delinquency Prevention Act established this office as a separate entity within OJARS. The 1982 request for OJARS totals $61,156,000 and 214 positions, which represents a decrease of $102,860,000 and 286 positions from the 1981 appropriation anticipated. As in 1981, the 1982 request does not contain any funding for LEAA's grant programs. OJARS' resources are provided by two appropriations, "Law Enforcement Assistance" and "Research and Statistics", and the requests for these appropriations are described below.

LAW ENFORCEMENT ASSISTANCE

The request for this appropriation is $21,923,000 and 125 positions, which is a decrease of $105,252,000 and 265 positions from the 1981 appropriation anticipated. Of major significance is the elimination of resources associated with the Juvenile Justice Program, which was $100,000,000 in FY 1981. The 1982 request would only provide resources for the Public Safety Officers' Benefit Program ($12,500,000) and sufficient staff to close out the remaining LEAA and Juvenile Justice grant programs.

Although no funding has been requested for OJARS' Juvenile Justice Program, the Administration expects that state and local jurisdictions may be able to utilize various existing Department of Health and Human Services block grant programs to continue successful juvenile justice efforts.

RESEARCH AND STATISTICS

This appropriation contains the resources associated with NIJ and BJS programs. The 1982 request totals $39,233,000 and 89 positions, which represents an increase of $2,392,000 and a decrease of 21 positions from the 1981 appropriation anticipated. Of this increased amount, $1,400,000 is for uncontrollable items. Program changes result in a net increase of $992,000 and a decrease

of 21 positions. A program increase of $1,160,000 will provide for the assessment of the Uniform Crime Reports now administered by the Federal Bureau of Investigation (FBI) and the redesign of the National Crime Survey of Victimization. This is offset by program reductions of $168,000 and 21 positions which results from the Administration's intention to reduce employment under the President's Program for Economic Recovery.

It should be noted that the current FY 1981 appropriation for these activities is only $19,000,000. The revised 1981 budget request of $36,841,000 includes a program supplemental for NIJ and BJS of $17,034,000 and a supplemental request for the pay cost increase of $807,000.

REDUCTIONS IN FORCE

Senator WEICKER. Senator Hollings, you have a meeting at 10 o'clock in the Budget Committee. Why don't you proceed with your questions.

Senator HOLLINGS. Thank you very, very much.

I just want to emphasize what I said in my opening statement.

Do you know, Mr. Attorney General, the reduction-in-force for the FBI? It goes from 19,738 to 19,306.

Attorney General SMITH. Actually, Senator, there will not in fact be any reductions of onboard people we have there now. The administration and I certainly heartily agree with comments that you made earlier about the importance of maintaining the strength of our law enforcement efforts and our litigation strength. As a matter of fact, I thoroughly concur with your reference to that activity as constituting domestic defense. I think that is a good characterization of it. I used that term myself before.

We have discussed this with Judge Webster. He is satisfied with this budget. He concurs that it should have no significant effect upon our current ongoing efforts in the law enforcement area.

Senator HOLLINGS. On the additional resources for the counterintelligence program we found one of the difficulties is the Attorney General is charged with the responsibility for the domestic security, and may object to the granting of visas for some. We all know about the intelligence community and everything else. Sometimes you want to let them in anyway. You know what I mean, just let them in anyway and just follow them—not necessarily for the 24-hour surveillance, but at least not lose them. It takes 12 agents.

I wish you would check into that and make certain. We think we have gotten on top of that. Namely, that the Attorney General has regained his position of really sounding off, unless, of course, the President overrules that. I don't want to use the figure here in an open hearing. There is no way to keep up with it, just that one thing. So I think when you are asking for an increase in the counterintelligence part, that you ought to examine that immediately. That is some of the old State Department bureaucracy. We change the top of the bureaucracy, but it comes back in, and then maybe 2 years later you find out we are filling up with hostile agents, even though you increased the

counterintelligence program, because the State Department was letting them in. That was one of the big problems we had.

VIOLENT CRIME

The serious crime, violent crime, what does that encompass?

Attorney General SMITH. It is really the degree to which the Federal Government is currently involved in prosecuting violent crime. I find that some 11 percent of the complaints that were filed last year involved violent crime. In addition to that, our activities in Atlanta, for example, deal with that very subject.

Obviously this is essentially a function of State and local government and the role that the Federal Government should play in it is one of the issues that this Commission on Violent Crime is going to be looking into. It is a matter of first inventorying those areas where the Federal Government is now involved and determining, to the best extent we can, those areas where it should be involved, those areas where it shouldn't be involved, and areas where it can assist in the State and local effort. This Commission is charged with first determining these questions within the current statutory scheme and current resources. The second phase of its effort will be to make recommendations as to what changes should be made in the law, if any, and what additional resources should be applied to this function.

Senator HOLLINGS. That is going to be awfully difficult.

Attorney General SMITH. It is very difficult.

Senator HOLLINGS. I mean changing the law about violent crime. As you indicated, the primary responsibility for that is State and local.

Attorney General SMITH. It is. Yet, Senator, I have talked at some length to a number of State and local prosecutors. Almost uniformly they say that what is badly needed in this area is what they call "leadership". I don't know exactly what that term means, but this is one of the charges that has been given this Commission, to determine what that means, and how the Government, perhaps without any great expenditure of resources, can provide that quality of leadership. As I say, this seems to be the one uniform comment that is made by those at State and local levels in this area.

Senator HOLLINGS. I will submit some other questions.

I appreciate your kindness, Mr. Chairman, very, very much.

We welcome you, Mr. Attorney General. We look forward to working with you.

Attorney General SMITH. Thank you very much.

EXECUTIVE ORDER 12036

Senator WEICKER. Mr. Attorney General, last week the New York Times and other newspapers reported that an interagency working group of intelligence officials has proposed significant changes in Executive Order 12036, the basic framework for all intelligence activities, signed by President Carter on January 24, 1978.

This Executive order imposes restrictions on the collection of intelligence information and the use of intrusive techniques such as searches, physical surveillance, and infiltration of domestic organi-

zations. The reported changes would represent a wholesale revision of Executive Order 12036 in terms of restrictions, authorizations, and the role of the Attorney General. For example, the proposed order would, as reported, downgrade the role of the Attorney General in scrutinizing intelligence activities; weaken the requirement that information be collected by the "least intrusive means;" relax restrictions on the infiltration of domestic organizations; allow the CIA to engage in electronic surveillance activity within the United States to assist and, in coordination with another agency authorized to do so, reduce restrictions on searches and surreptitious entries and on the collection of information on individuals.

The proposed changes would also conflict with provisions of the National Security Act, which states that the CIA "shall have no police, subpena, law enforcement powers, or internal-security functions," and of the Foreign Intelligence Surveillance Act, which establishes strict standards for undertaking electronic surveillance, and details the role of the Attorney General in authorizing the use of such techniques.

Mr. Attorney General, did you or any other officials of the Justice Department participate in the drafting of this new order or the preparation of recommendations accompanying it? Who were the other persons involved in this effort if that is the case?

Attorney General SMITH. There was an interagency group that has been working on that subject, the lead agency being the CIA. We were involved in some of the preliminary discussions; I, along with various other individuals who were involved in the intelligence community, such as Judge Webster and representatives of State, Defense, and possibly some others.

This draft to which you referred was just exactly that, a preliminary draft of some of these ideas. It represents no conclusion, no decision, and no concurrence of the various people involved in that. It was just exactly a draft. As a matter of fact, the group that is continuing to work on this subject is well aware of the concerns that you have expressed to me here. I have similar concerns. Whatever comes out of the ultimate consideration of this area I am sure will be quite different from the draft to which you refer. I really cannot comment as to what changes are ultimately likely to be made because that whole question is under consideration at this point. No decisions of any kind, at least to my knowledge, have been made. In fact, we would hope to, at the appropriate time, work with the appropriate committees of Congress.

Senator WEICKER. Were you personally involved in this draft?

Attorney General SMITH. No; I was not.

Senator WEICKER. Will you be personally involved in what now subsequently occurs from that draft?

Attorney General SMITH. Either personally or through my representative.

ROLE OF THE ATTORNEY GENERAL

Senator WEICKER. Under proposed changes in Executive Order 12036, reported last week, is the role of the Attorney General being downgraded? I was just wondering, do you know which law enforcement official would then be responsible for overseeing compliance?

My own feeling is the Attorney General should be involved. He is the man that sits there at the top and is responsible for seeing that the law is impartially enforced and is enforced on behalf of all Americans. Do you see yourself relinquishing that role or your Office relinquishing that role?

Attorney General SMITH. No; it seems to me the Attorney General has to play a very significant role in this whole area.

I would assume, although no decision has been made—and ultimately the President will have to make a decision for the administration—but I would certainly anticipate that the Attorney General would continue to play a substantial role in that process.

COMMITTEE ROLE

Senator WEICKER. General, do you think it would be a good idea and would you give us the opportunity to sit down with you and to have a discussion as to whatever the final proposal is that comes out of all of this before enactment of it?

Attorney General SMITH. We certainly would appreciate the comments or opinions or suggestions of Members of Congress. How the process actually works and how the sequence would develop is a little hard for me to say since I am only one member of the group.

Senator WEICKER. Speaking for this committee, I think we would appreciate the opportunity so that we don't sit here and look over your shoulder, when indeed you have many things to do, and we don't want to interfere with what is certainly the right of the executive branch to formulate new policy. It would be much simpler, I think, if we had the assurance that prior to anything being finalized, that there would be the opportunity to sit down and have a back and forth either in executive session or in open session, whichever the administration wants.

Attorney General SMITH. We would certainly want to cooperate to the fullest extent possible.

Senator WEICKER. There is too much agony behind this, General. That is the difficulty in lightly tossing it out.

Attorney General SMITH. I know.

Senator WEICKER. Speaking of drafts, the last draft in this area was called the Houston plan. That is the last draft. I had occasion to confront that personally during the course of previous investigations. Many times these things become misinterpreted in the course of public discussion. I just would like to have the assurance that there will be the opportunity to sit down as this thing takes shape before it actually becomes executive policy.

Attorney General SMITH. Whether this is the appropriate committee to do that with or not I just don't know.

Senator WEICKER. In this town there is the authorizing committee, and then, General, I believe that any committee that oversees your budget is the proper committee.

Attorney General SMITH. We have to pay attention to that, right. [Laughter.]

Senator WEICKER. So I want to repeat that I think this has caused great concern. I don't think it is fair at this juncture to prejudge. I just want to be certain we do have the opportunity to have input on this matter prior to enactment of such a move.

SCHOOL BUSING AMENDMENT

In the last Congress an amendment was added to H.R. 7584, the State, Justice, Commerce fiscal year 1981 appropriations bill—your friend over there will tell you that is the difficulty. These matters of substance, not just spending, are coming into the appropriations process, increasingly, so I would say, over the last decade really. Vietnam started it all off, I guess, where matters of substance get tacked onto the appropriations bills. That is why we are no longer removed from what normally was entirely within the purview of an authorizing committee.

In the last Congress an amendment was added to H.R. 7584, the State, Justice, Commerce fiscal 1981 appropriations bill, to bar the Justice Department from bringing any legal action to require, either directly or indirectly, school busing for desegregation. President Carter vetoed H.R. 7584 because of this amendment. Subsequently, H.R. 7584 was attached to the continuing resolution and the antibusing language was deleted by the Senate.

I might add, a Weicker amendment, which stated that notwithstanding any of the aforementioned language, that the Justice Department shall enforce the Constitution of the United States, was also defeated.

Mr. Attorney General, I would first of all like to find out whether you deem such an amendment "an unconstitutional encroachment by Congress into the executive and judicial branches"?

Attorney General SMITH. That is a very complicated question. As a matter of fact, I have to say, as of right now, I have not come to a conclusion on that subject. We are studying it. It has been studied in the past. There are differences of opinion on the question.

CONGRESSIONAL RESTRAINTS ON DEPARTMENT'S JURISDICTION

Senator WEICKER. Mind you, I am trying to restrict myself to the narrow issue without going into the broad issue of busing, as to whether or not the Congress can restrict the Justice Department's capacities in this area.

Attorney General SMITH. In any event.

Senator WEICKER. That is correct, in any area.

Attorney General SMITH. We are going to have to confront that issue before too long, I suspect. We haven't yet, but we are in the process of looking into it.

I know that there is a substantial body of thought that Congress cannot constitutionally legislate in that fashion. There are opposing views on the subject. We just at this point have not taken a position on that question. We probably will not take a position on it until we are confronted with a specific issue of the nature that you mentioned, if in fact we are.

Senator WEICKER. Does it not occur to you that it does little good to establish a legal wrong if indeed there is no remedy available?

Attorney General SMITH. That is certainly one of the problems.

Senator WEICKER. Who is to say that next year maybe the Congress won't like something else the Justice Department is doing and we will preclude that. I think there is a very serious constitutional question involved here.

Attorney General SMITH. You have both the constitutional question and you also have the question of good lawmaking. We would be confronted with a constitutional question. You would be confronted with a question of good lawmaking—"you" being the Congress.

Senator WEICKER. Would you hope in the future the Congress might pass such things as the Weicker amendment that says the Justice Department can enforce the Constitution of the United States?

Attorney General SMITH. I would hope it wouldn't be necessary. [Laughter.]

Senator WEICKER. First of all, I will have several questions for submission for the record to which I would like you to respond.

Attorney General SMITH. Fine.

ATLANTA MURDERS

Senator WEICKER. The Federal Government is actively assisting the city of Atlanta in an effort to apprehend those responsible for the abduction and deaths of black children there. How is this being coordinated both with the city officials and within the Department?

I know we have all read about it in the sense of a Federal effort. I was wondering whether you would like to give this committee a little more detail?

Attorney General SMITH. As a matter of fact, I think it has been really a very good effort. I haven't been there personally, but the reports that I get indicate that there has been really a very high degree of cooperation. We have had anywhere from 26 to 40 FBI agents down there who have worked, as I understand it, remarkably well with the local police authorities. In addition to that, our Community Relations Service and some of the agencies in HHS, as I understand it, have been working in what you might call noninvestigative aspects, rumor control and guidance and consultation services of one kind or another.

As you know, in addition to the indirect costs, we have also provided about 1 million dollars' worth of services in that area, in addition to the $1.5 million that the President just announced a couple of days ago.

It would be interesting ultimately to sort of have a case history as to what happened in Atlanta in this area in terms of how the Federal, State, and local people worked together. But the indications I have up to now have been that the cooperation has been really quite good.

Senator WEICKER. Is it the intention of the Federal Government to stick with this thing until its conclusion?

Attorney General SMITH. I am sure, to the extent that we can do so in any significant way.

Senator WEICKER. I don't think there is any question about the fact you will find a willingness on the part of this committee to cooperate with whatever funds are necessary. But I think what is also important, in a matter such as this—I think you people who are professionals know this better than I. These things are never handled in a matter of weeks and months. It is a question of getting people down there and planning to stick with it. What I am trying to elicit from you is whether or not this commitment is going to stay around obviously to the point where it can be useful.

Attorney General SMITH. As I say, it is awfully hard to evaluate that, but certainly we have every intention of doing everything the Federal Government can do to resolve that situation.

Senator WEICKER. Then you will feel no restraint, in light of any economic game plans, to come before the committee to ask for whatever is necessary in the way of funding?

Attorney General SMITH. I am sure we would do that if that was what was indicated.

ELIMINATION OF JUVENILE JUSTICE FUNDING

Senator WEICKER. The juvenile justice program is slated for elimination in fiscal year 1982. Does this mean that the administration views the goals of the act—to remove noncriminal children from jails and adult lock-ups—as matters which are not the concern of the Federal Government?

Attorney General SMITH. No; as a matter of fact, this is one of those hard choice areas. The purpose and the goal of that program is certainly a laudatory one. We think that it will continue. This is not to eliminate the program. It is designed to eliminate the funding under the Justice Department budget. We would expect that grants from HHS would continue certain of these activities and State and local governments would take over the activities as well.

It is one of those things where we wish we had enough money to go around and do everything that should be done, but we don't. We have to make some hard choices, and the hard choices here involved juvenile justice as well as trustees.

Senator WEICKER. I think that is what is of concern to many of us in this whole budget-cutting operation, as to whether or not the substance was addressed. Indeed, if this program worked, then that should cut down on moneys to be committed further out by prevention of youngsters becoming hardened criminals and avoidance of the cost attendant thereto. I just wonder whether or not there is any possibility that the program is going to be picked up in the form of a block grant by States who certainly have many other priorities?

Attorney General SMITH. Of course, our effort has been to work through the States and the localities. If this is a function that is working and is important, presumably the States would utilize the funds that they would obtain through HHS to continue these programs.

JUVENILE JUSTICE ACT REPEAL

Senator WEICKER. It doesn't work that way, General. Believe me on that score. It might work in California. It might work in Connecticut. It is not going to work that way in many States. I think that is one of the basic fallacies that is bejng assumed here by the administration in so many of its cuts.

Do you intend to go ahead and ask for a repeal of the Juvenile Justice Act?

Attorney General SMITH. We really haven't considered whether that is necessary. It doesn't seem to me—as I recall, I don't think that is one of the areas in our budget where we have to have statutory action. I think that can be handled in the budget.

Mr. ROONEY. We don't plan at this time to do that, but we are considering whether it would be required.

Senator WEICKER. But if it just sort of sits there on the books without any funding, it becomes somewhat meaningless, doesn't it? The funding has to come out of here if it doesn't come from the States. Are you going to wait and see if the States respond, and if they don't, then ask for a repeal?

Attorney General SMITH. Of course, it could always be refunded. This is not necessarily in cement. But in any case, we are considering those areas which would call for some statutory changes in the budget, and there are several. The U.S. trustees is one of them. We have not contemplated that the juvenile justice program would require that. But if it does, we will include that in the package.

RESPONSIBILITY FOR JUVENILE JUSTICE COORDINATION

Senator WEICKER. You have the responsibility as Attorney General for coordinating a Federal strategy to address juvenile justice issues and serve as chairman of the Coordinating Council on Juvenile Justice and Delinquency Prevention. How do you intend to fulfill this responsibility in light of this program change?

Attorney General SMITH. Well, it will minimize it. There is no question about that. In other words, our participation obviously will not be as direct.

Senator WEICKER. Will the proposal to eliminate the Office of Juvenile Justice and Delinquency Prevention also eliminate the National Advisory Committee for Juvenile Justice and Delinquency Prevention?

Attorney General SMITH. Not to my knowledge.

Senator WEICKER. Does that advisory committee require funding? Who is the expert on that?

Mr. ROONEY. No funding is required.

EFFECTIVENESS OF JUVENILE JUSTICE PROGRAM

Senator WEICKER. I am deeply concerned in this area. I have not heard from the States as to how they intend to approach the problem. I just think there is a difference between dollars thrown away and those that come back to us. I first ran into this on budget cuts as chairman of the Committee on the Handicapped and Disabled. We were talking about two of the major Federal programs: one which dealt with the education of young people in the sense of retarded, the other with training of adults in the sense of disabled. Now, there were Federal dollars that were spent, but clearly it made more productive members of society, so clearly you were making money.

This seems to be another one of those areas. That is what my concern is. We are going to go ahead and we are going to reopen the penitentiaries at McNeil Island and Atlanta and Leavenworth. We will do all of these things that are worth a lot of money and relate to people that got off on the wrong foot.

Here is a program and, if it works, you won't need the additional beds and cells in those places.

Have we ever been able to gage the effectiveness of this program? How long has it been on the books?

Mr. ROONEY. This program has been there since 1974.

Senator WEICKER. Has there been any sort of a study conducted on this program, the GAO or anybody?

Mr. ROONEY. Not to our knowledge.

Senator WEICKER. We will be going over this budget. If we have further questions with regard to this, we will certainly be in touch with you.

Attorney General SMITH. I understand that. As a matter of fact, as always, we wish we had the resources to do all of the things that should be done. But we are——

Senator WEICKER. But, our kids are the greatest asset of this country. That is really where our greatest responsibility is. The area of our children is one where we can influence whether or not they get off in the right direction.

IRANIAN LITIGATION

In the fiscal year 1981 supplemental $400,000 is requested to litigate cases arising from the freezing of Iranian assets. How many cases have been filed pursuant to the agreements with Iran by the Carter administration?

Mr. ROONEY. We don't have that, Senator. We should be able to provide that for the record.

[The information follows:]

IRANIAN ASSETS LITIGATION

The requested funding of $400,000 is to provide for payment to foreign counsel who were hired to represent the vital interests of the United States in 10 suits filed in courts in the United Kingdom and France before which Department of Justice attorneys are not authorized to appear. All of these suits were filed prior to the agreement with Iran.

ELIMINATIONN OF BANKRUPTCY TRUSTEE PROGRAM

Senator WEICKER. Are funds budgeted for this litigation in fiscal year 1982?

Mr. ROONEY. No; they are not.

Senator WEICKER. No funds?

Mr. ROONEY. No, sir.

Senator WEICKER. Last week we had testimony from the courts on their requirements for fiscal year 1982. I see that the Justice Department is proposing the elimination of the U.S. trustee program which will save about $7.3 million next year. Have you had any discussion with the courts concerning this proposal?

Attorney General SMITH. No; as a matter of fact, as I indicated in my opening statement, Mr. Chairman, I have a meeting scheduled with the Chief Justice the first week of April to discuss that matter. I have already discussed it informally with him a little bit.

SANCTIONS ON CHILE

Senator WEICKER. The previous administration imposed sanctions on the government of Chile following its refusal to cooperate in efforts by the Justice Department to extradite officials wanted in connection with the murder of Orlando Letelier. The State Department recently announced the removal of these sanctions, saying it was undesirable to have a double standard in human rights policies.

Was there any consultation by officials of the State Department with yourself or others at the Department of Justice prior to the removal of the sanctions?

Attorney General SMITH. I had no discussions. I would have to check to see whether anybody else in the Department did.

Senator WEICKER. Would you provide that for the record?

Attorney General SMITH. Yes.

[The information follows:]

CHILEAN SANCTIONS

A review indicates that there were no consultations by State Department officials with Department of Justice officials regarding the removal of sanctions.

TASK FORCE ON VIOLENT CRIME

Senator WEICKER. As you have indicated, you have just established a new task force on violent crime under former Attorney General Griffin Bell. I understand that it will report back in two phases—first, within 60 days with recommendations on what can be done under existing law; and the second phase, later this summer, on recommendations for legislative change.

How much is budgeted for the task force and from where are the funds being drawn?

Attorney General SMITH. We have not budgeted anything for the task force. You mean expenses?

Senator WEICKER. Yes; whatever, whether it is expenses or per diem.

Attorney General SMITH. You are just talking about the travel and this sort of thing?

Senator WEICKER. Yes.

Mr. ROONEY. That will be funded out of the general administration appropriation.

Senator WEICKER. The staffing of the task force, how will that be handled?

Attorney General SMITH. We are having one executive director and the remaining staff come from in-house.

Senator WEICKER. At your confirmation hearing on January 15 you stated that you would review the FBI's role in bank robbery investigations to determine if changes were needed. Has this review been conducted?

Attorney General SMITH. This will be part of the task force study.

Senator WEICKER. The violent crime task force?

Attorney General SMITH. That is right.

ELIMINATION OF LEGAL SERVICES CORPORATION

Senator WEICKER. Were you consulted and did you concur in the OMB decision to eliminate the Legal Services Corporation?

Attorney General SMITH. I have discussed that with representatives in the White House, but we have not discussed it on a policy basis because it is not part of our budget. We have been sufficiently involved in our own budget. We haven't discussed the budget as far as other agencies are concerned.

Senator WEICKER. But was there consultation in asking the advice of the Attorney General on this matter?

Attorney General SMITH. We had discussions on it, yes.

Senator WEICKER. At the request of the Office of Management and Budget?

Attorney General SMITH. Yes.

Senator WEICKER. Did you concur in that decision? Were you asked for a concurrence in the decision?

Attorney General SMITH. I wasn't asked for concurrence, and as I say, I have not really come to grips with it on a policy basis as of yet.

Senator WEICKER. Do you think it logical to assume that the President might seek your advice on something like this?

Attorney General SMITH. I would assume so.

Senator WEICKER. Has he yet?

Attorney General SMITH. Not as yet.

INSPECTORS GENERAL

Senator WEICKER. I have had my quarrels with the Office of Professional Responsibility in the past. I see you are proposing a reduction of three positions, going from 11 to 8. How do you intend to deal with allegations of misconduct on the part of Department officials? Why shouldn't the Department have an Inspector General, like other Cabinet agencies?

Attorney General SMITH. As you know, the whole subject of Inspectors General is under consideration. However, we think our office has operated well. As a matter of fact, we are also quite confident that under the proposed staffing, we will be able to fulfill all of the obligations that that office is called upon to perform.

TAX REFORM ACT

Senator WEICKER. One last question, General. You have been patient. And as I say, I have other questions of considerable substance, but I will ask those for response in the record.

The other matter has been sort of a personal cause for me. I would like to raise it for the first time, probably not the last, as we relate to each other in the years ahead.

In 1976, prompted by documented misuse of tax information, the Congress enacted limitations on Internal Revenue Service disclosure of individual tax returns. In so doing, a careful balance was struck between the information needs of law enforcement agencies and the individual privacy rights of taxpayers.

During the last session of Congress, the session before that, an effort was made to alter that balance in favor of law enforcement without clearly identifying any deficiency with the present law. According to information presented to the Congress, the only difficulty which has arisen is attributable to IRS's failure to respond to court orders requiring disclosure of tax information.

Do you believe that changes are necessary in the Tax Reform Act of 1976 in order to allow Justice Department attorneys to more effectively prosecute criminal activity?

Let me say this to you, because I don't want to be unfair. If this is a subject you have not had a chance to go into, I would just as soon not try to push it out here and will give you a chance to examine it. But it is a substantial issue and has been in the last several Congresses.

Attorney General SMITH. As a matter of fact, I don't have any conclusions on that subject. I do know that there are strong feelings on both sides of that question. Just in the ordinary discussions I have heard up to now, I do know that on the law enforcement side there is a substantial feeling that there should be more information available. I also know that on the privacy side there are people who feel very strongly that the balance is properly struck.

I have come to no conclusions. I really haven't had occasion to study the matter.

Senator WEICKER. I say this to you: One thing you might look at is the difficulties that have been raised, as I have heard the arguments on both sides—maybe I am partial since I had a hand in drafting the Tax Reform Act of 1976—but the difficulties arise not so much with the law as its administration. I would suggest that in your review you see whether or not some action can't be taken, either an amendment to the act or administrative action, that would resolve the difficulties that exist.

Apparently there is a reticence on the part of the IRS—and I can understand the concern in light of experiences they have been put through in years past—but it seems to me this can be ironed out administratively.

Gentlemen, Mr. Attorney General, it is nice to have you here. As I said, I look forward to working with you. If you can assure me that some of my conservative colleagues will stay away from my appropriations bill on the floor of the Senate when it comes to matters of substance and policy, I will assure you that I won't put you to the test on those kinds of issues.

Attorney General SMITH. Thank you very much. I appreciate your courtesy.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I have some questions for myself and Senators Hollings and Cochran for response for the record.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Change in Department Policy

The budget which President Reagan has submitted reflects a major reordering of the role and functions of the Federal Government in relationship to the private sector and state and local governments. What change in direction can we expect in the administration of justice and law enforcement?

As you know, I recently announced the formation of an Attorney General's Task Force to assist me in formulating strategies in the extremely critical area of violent crime. One of the major goals of this group will be to clarify and develop what the appropriate role of the Federal Government, vis-a-vis state and local authorities, should be in this area of increasing national concern.

If it is determined that the Department should undertake a greater effort in this area, the Task Force will then address the issues of the legislative authority and program resources necessary to effect implementation of their recommendations. We recognize that under the Constitution this area is one in which state and local governments have primary responsibility. Although the Task Force will address an expanded leadership role for the Federal Government with respect to the prevention, investigation, and prosecution of violent crime, it is unclear at this time whether or not the proper federal role will result in need for significant additional federal program resources.

In general, however, and notwithstanding the decrease in resources represented in the Department's FY 1982 budget request, we are maintaining or enhancing those programs of high priority to the Department. This Administration is firmly committed to an effective federal criminal and civil justice effort, and I believe we can carry out this commitment with the levels of resources requested without jeopardizing the essential missions of the Department.

The last Administration placed high priority on three areas of law enforcement--organized crime, white-collar crime, and government corruption. At the same time, it reduced federal resources committed to state and local problems in order to concentrate on these priority areas. Can we expect the same emphasis on these three areas or do you expect the Department to become more involved in state and local problems? If so, what do you see as appropriate areas of federal involvement?

Federal enforcement priority will continue to be given to national programs such as organized crime, white-collar crime, public official corruption, fraudulent abuse of government programs, and narcotics trafficking. In certain instances, we are increasing resources for these programs. At the same time, the FY 1982 request reflects that federal subsidies to state and local criminal justice programs should be reduced or eliminated where those jurisdictions are capable of assuming greater financial responsibility themselves. Therefore, I do not necessarily foresee the Department's role as one of substantially increased financial assistance to state and local government; rather, I would describe the Federal role more as one of exercising leadership and guidance. The results of the Task Force

on violent crime should more clearly identify the proper respective roles of the federal and state and local governments.

The Department of Justice exercises direct supervision over the activities of the U.S. Attorneys. In the past, decisions regarding prosecution of certain types of crimes has been reserved to the Department--particularly those involving public corruption, elections fraud, and public officials. What change, if any, will there be in the relationship of the U.S. Attorneys to Washington?

It is the position of this Administration that as many cases as possible should be handled by U.S. Attorney offices in their respective judicial districts. To the extent that we efficiently implement this policy, I do not believe that it will reflect any radical change in the relationship of the U.S. Attorneys to the Department or the individual legal divisions. The Attorney General, through the Assistant Attorneys General of the legal divisions, continues to have final authority and responsibility for determining which cases should be brought. At the same time, I believe that U.S. Attorneys should have the ability to exercise a considerable degree of discretion and and flexibility regarding the prosecution of criminal matters and the bringing of civil suits. The Department's litigating organizations, either alone or in conjunction with the U.S. Attorneys, will in most instances have primary responsibility for those cases which are multi-jurisdictional in nature, national in scope or application, or highly complex either in terms of establishing legal precedents or of requiring specialized technical expertise.

Federal Justice Research Program

I understand that you are requesting $1.3 million for the Federal Justice Research Program. This program was created by Judge Bell three years ago to fund special research project that were thought necessary to assist in developing department policy. Though this program was initially proposed as a one-time only request, it has been reappearing in the budget for every subsequent year. I might also add that this Subcommittee has reduced the requested funds for this program for each of the past two years.

What projects are planned for these funds?

		Amount
1.	White Collar Crime Prosecution Strategies. To develop white collar crime prosecution strategies based upon the results of a survey project on white collar crime.	$156,000
2.	Fines and Judgments. To improve procedures for collecting criminal fines and civil judgments by U.S. Attorneys. The Attorney General has cited this in his "Policy and Program Guidelines" as one area for improvement in 1981.	200,000
3.	Resource Allocation for Investigations. To develop a method of resource allocation for investigation activities in light of Department guidelines.	250,000

		Amount
4.	Civil Alternatives. To design and test the alternative procedures for handling civil cases in federal courts suggested by the cost of civil litigation research projects.	$200,000
5.	Costs of Crime. Continuation of a project from FY 1981 to develop a means to assess the relative total costs of criminal activity in this country, yielding data to better allocate law enforcement resources.	100,000
6.	Role of Courts Research. To conduct research in response to the recommendations of the Council on the Role of Courts.	100,000
7.	Federal Appellate Cases. To improve procedures for processing federal appellate cases.	100,000
8.	Exclusionary Rule Improvements. To develop improvements in exclusionary rule procedures to preclude the exclusion of evidence for very minor administrative errors.	100,000
9.	Rules of Criminal Procedure. An initial project in a long-term effort to produce a re-written and integrated code of criminal procedure.	100,000
	Total FY 1982 Budget Request	$1,306,000

In addition to the above planned projects, the Federal Justice Research Program currently is developing projects to improve strategies for terrorism control, to improve the capability of courts to accept and use scientific information, and to develop promising research ideas through an abbreviated program of smaller awards. These projects would be considered for funding in FY 1982 if some of the listed projects could be done for less money or if the research plan needed modification.

As a matter of information, Attorney General Levi initiated the Federal Justice Research Program. The September 1976 request for FY 1978 contained a $2,750,000 request for this program. Attorney General Bell, however, was the first Attorney General to testify in support of the program before the Congress.

Enforcement of Environmental Laws

As part of the supplemental request submitted by the prior Administration $2.7 million was proposed to establish an Environmental Enforcement Section in the Lands Division to enforce pollution control laws and to increase staff in the Hazardous Waste and General Litigation Sections. In all 47 additional positions were proposed for FY 1981--with 22 more to be added in FY 1982.

The Administration is now withdrawing this supplemental request. Does this indicate a policy position with regard to the Department's

commitment to enforcing anti-pollution laws? Are they given a low priority? Is any reorganization of the Lands Division proposed?

In September 1980, the Department, through internal reprogramming, established within the Division an Environmental Enforcement Section. The Department's commitment to the Division's enforcement program is evidenced by the decision not to eliminate this Section when the proposed supplemental was withdrawn but rather to assume an across-the-board strategy in returning to the previous level of 338 positions for FY 1981. While the withdrawal of the supplemental will mean less than full staffing for this Section, i.e., 26 of 30 positions for Environmental Enforcement, a viable enforcement effort will still be maintained.

The Division will continue to place in high priority the litigation of those cases where the health, safety and welfare of the public is seriously jeopardized.

No reorganization of the Division is anticipated at this time.

Iranian Assets Litigation

An amount of $400,000 is requested in the FY 1981 supplemental to litigate cases arising from the freezing of Iranian assets. In what way and in how many cases is the Department involved?

The requested funding of $400,000 is to provide for payment to foreign counsel who were hired to represent the vital interests of the United States in ten suits filed in courts in the United Kingdom and France before which Department of Justice attorneys are not authorized to appear. All of these were filed prior to the agreement with Iran.

The representation by foreign counsel includes and has included protecting the integrity of the decision to freeze Iranian assets, participating in the recent intensive negotiations to affect the transfer of frozen funds to an escrow account and involvement in extended legal activities necessary to carry out the agreements between the governments of the United States and Iran. As with all foreign counsel agreements, these activities are subject to monitoring and review by the Department. There are currently ten cases pending in courts in England and France.

Are funds budgeted for this litigation in FY 1982?

Although the duration of the litigation and related legal activities to carry out the accords is difficult to forecast, it is currently estimated that funds for this purpose will be non-recurring in FY 1982. However, supplemental funding might become necessary in FY 1982 depending on the status of the ongoing activities.

It should also be noted that the FY 1981 supplemental request is only for foreign counsel expenses and provides no relief to the Department for the considerable costs and resources expended to participate in the over 350 domestic suits which arose from the freezing of Iranian assets.

Multi-State Drug Grants

Last year $9.5 million was provided for the multi-state organized crime and narcotics units. At your confirmation hearing you stated that the goals and objectives of the units were laudable and that you were willing to meet with the heads of these units. $6.3 million from this program is being deferred to offset pay costs and there is no request for FY 1982. Have you met with the heads of these units and does the non-funding reflect the results of these meetings?

Deputy Attorney General Schmults met with the heads of the regional intelligence units the very first working-day after his confirmation by the Senate. The meeting did not have any direct bearing on the decisions regarding funds for FY 1981 and 1982. This decision simply reflected the difficult choices inherent in this process.

Relationship with Inspectors General

The President is placing great emphasis on the elimination of fraud and waste in government. What will the role of the Justice Department be in this effort and how closely can we expect the Department to work with and lend assistance to the Inspectors General?

The Department of Justice will perform a leadership role in the Administration's efforts to combat fraud and waste in government. The Department's leadership role will be fulfilled primarily through the litigation and policy efforts of the Criminal and Civil Divisions. In the policy area, these two Divisions are currently developing proposed legislation that will provide federal agencies with authority to impose civil penalties in instances of fraud and abuse. Also, the Department will play an active role in an interagency task force to attack waste and fraud, now being put together by OMB. In the litigation area, the Criminal Division, the Civil Division and the United States Attorneys will continue to give cases involving fraud against the government special emphasis.

The Inspectors General along with the FBI and the Department, are critical players in our efforts to combat fraud and abuse. The staffs of the Criminal and Civil Divisions are in daily contact with the Inspectors General relative to special investigations and audit projects, as well as training and policy development, and we expect that close working relationship to continue.

Along these lines, wouldn't one expect that any major effort to combat fraud and waste should include the Department of Defense? Since the Department of Defense does not have an Inspector General - how does the Justice Department propose to work with this agency?

Yes. The Fraud Section of the Criminal Division is working closely with the investigative units in the military services (Army Criminal Investigation, Naval Investigative Service, and the Air Force Office of Special Investigation), the Defense Investigative Service, and the Defense Contract Audit Agency. Our special efforts in this area include staffing major procurement cases as well as active coordination and training efforts. An example of this effort is a Criminal Division two-day training conference for white-collar crime supervisors

in the military investigative units being planned for April 14 and 15, 1981. The conference will focus on criminal, civil and administrative remedies as well as strategy development for undertaking major investigations. We hope that through our coordination and leadership role, we will maximize the effectiveness of the sizable Department of Defense audit (5,000 positions) and investigative (4,000 positions) resources.

Foreign Corrupt Practices Act

During the course of its investigations, the Office of Watergate Special Prosecutor discovered that a number of United States corporations or their subsidiaries had paid substantial bribes, or made other payments of dubious character, to officials of foreign governments. Further investigations, conducted by the Securities and Exchange Commission, revealed that instances of undisclosed, questionable, or illegal corporate payments, both domestic and foreign, were so widespread that they threatened to undermine public confidence in the integrity of the free enterprise system.

These disclosures of widespread questionable payments prompted Congress to pass the Foreign Corrupt Practices Act, which was signed into law on December 19, 1977. In enacting this legislation, Congress made clear its view that these dubious or illegal payments were unethical and reprehensible. As evidenced by the legislative history of the Act, Congress considered these payments to be inconsistent with the principles of a free market economy, unnecessary for the successful conduct of business, and a source of serious interference with the conduct of the nation's foreign policy.

Recently, on March 20, 1980, the Justice Department adopted a Foreign Corrupt Practices Act Review Procedure modeled after the Antitrust Division's business review procedures. When this review procedure was first proposed in 1979, I questioned the then head of the Criminal Division, Assistant Attorney General Philip B. Heyman, about such a plan to give companies advice on a case-by-case basis. I was concerned that such a pre-clearance procedure would provide these companies with a roadmap of how they can make the very payments condemned by Congress without fear of prosecution. Furthermore, I was concerned that in addition to impeding prosecution by the Department of Justice under the Act, the Review Procedure could interfere with actions by the Securities and Exchange Commission.

I also recommended that, to enhance compliance with the law, all requests for review, as well as the responses of the Criminal Division, should be placed in a file open to public inspection.

Would you please explain the foreign corrupt practices act review procedure as adopted? Has the implementation of such a review procedure had the practical effect of weakening compliance with the law?

The Foreign Corrupt Practices Act Review Procedure provides a mechanism for businessmen and attorneys to seek guidance from the Department of Justice about the meaning and application of the antibribery provisions of the Act. The Review Procedure is part of the Federal Government's program to implement an effective national export policy and eliminate unintended or unwarranted obstacles to export.

However, the Department intends to continue its efforts to enforce vigorously all the Act's provisions.

Under the Review Procedure, a company concerned about a possible violation of the Act may give to the Justice Department the details of a prospective transaction in a foreign country. After a thorough evaluation, the Department will advise in advance whether it will take enforcement action under the Act if the transaction proceeds further. With this advance ruling, the company is then in a position to decide whether to proceed. Uncertainty over the Act's application to the transaction has been eliminated.

The Department states its enforcement intentions in the Review Procedure only in regard to the Act's foreign antibribery provisions (Sections 103 and 104). The Review Procedure is not available for matters related to the recordkeeping provisions (Section 102). The statement of enforcement intention is binding on the Department only as to the party submitting the request and only if the underlying facts remain unchanged. No agency other than Justice is so bound.

The Securities and Exchange Commission (SEC) did not join the Department in the administration of the Review Procedure and therefore the SEC remains technically free to take a civil enforcement action under the Act against corporations subject to its jurisdiction ("Issuers" as defined by Section 103). However, in August 1980, the SEC announced that, as an exercise of discretion, it would not take a civil enforcement action against an issuer for any transaction which the Justice Department had cleared prior to May 31, 1981, pursuant to the Review Procedure.

Through the regulations establishing the Review Procedure, the Department has agreed to provide, consistent with the Freedom of Information Act, the maximum possible lawful protection from public disclosure of confidential business information submitted by a company in a Review Request. To the extent that the information is exempt from mandatory public disclosure under the Freedom of Information Act, the Department will keep confidential the name of the foreign country involved in the underlying transaction, the identity of any foreign agents and other exempt identifying information.

However, to provide general guidance to the interested business and legal community, the Department's decision in each matter is publicized by the issuance of a release which generally describes the nature of the transaction and the Department's enforcement decision.

The implementation of the Review Procedure has in no way weakened compliance with the law. It is clear from a careful evaluation of the four Review Releases issued thus far that the Department is not using the Review Procedure to provide the business community with a roadmap for violations of the Act. Copies of these four Review Releases have been attached for your convenience.

No. 80-01

Date October 29, 1980

Foreign Corrupt Practices Act Review Procedure Release

The Department of Justice has received a review request from an American law firm which seeks to do business in a foreign country. The law firm proposed to establish a fund for the American education and support, amounting to a total of approximately $10,000 per annum, for two individuals who are the adopted children of an honorary official of the government of the same foreign country. This official, who is elderly and a semi-invalid, has duties which are only ceremonial and do not involve substantive decision-making responsibilities. The natural parents of the two children are living and are employees of the foreign government. However, the natural parents are not in a position to make or to influence official decisions that would in any way benefit either the law firm or any corporations which may contribute to the education fund, in their dealings with the foreign government.

There has been no suggestion that any preferential treatment would be granted in return for the proposed conduct. Since its original contact with the foreign government, no business has been obtained or retained by the firm as a result of the proposed conduct, nor is any expected.

Based on all of the facts and circumstances as represented by the requestor, the Department does not presently intend to take an enforcement action with respect to any of the prospective conduct described in the request.

The FCPA Review Letter and this Release have no application to any party which did not join in the request, and can be relied upon by the requesting parties only to the extent that the disclosure of facts and circumstnaces in the request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.

No. 80-02

Date October 29, 1980

Foreign Corrupt Practices Act Review Procedure Release

The Department of Justice has received a review request from Castle & Cooke, Inc., and two subsidiaries, pursuant to the Foreign Corrupt Practices Act Review Procedure. An employee of a subsidiary in a foreign country has been asked by a political party in that foreign country to run for public office. The employee has worked for the subsidiary for ten years. He has requested permission to retain his private employment while being a candidate for the legislature and, if elected, while serving in public office. The employee's duties with the subsidiary do not include any type of advocacy work or any type of representation before the government on the corporation's behalf. The government post is essentially part-time, and it is common practice for legislators to hold outside employment. The employee will fully disclose his continuing relationship with the corporation to his political party, the electorate and to the government. He will refrain from participation in any legislative matters or other governmental action which

would directly affect the corporation, and his salary will be based on the amount of time he actually works for the corporation. An opinion of local counsel states that, as structured, the proposed conduct does not violate local conflict of interest or other laws.

Based upon all of the facts and circumstances as represented by the requestors, the Department does not presently intend to take an enforcement action with respect to any of the prospective conduct described in this request.

The FCPA Review Letter and this Release have no application to any party which did not join in the request, and can be relied upon by the requesting parties only to the extent that the disclosure of facts and circumstnaces in the request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.

No. 80-03

Date October 29, 1980

Foreign Corrupt Practices Act Review Procedure Release

A domestic concern has submitted a proposed contract for review pursuant to the Foreign Corrupt Practices Act Review Procedure. The proposed contract is with an attorney domiciled and functioning in West Africa. It makes two specific references to the Foreign Corrupt Practices Act. In one such reference, the attorney agrees and represents that he is not, and during the course of the agreement will not be, a foreign official. The other such reference expressly prohibits payments to foreign officials, using the language of the Act. Pursuant to Section 50.18(g) of the Review Procedure, the Criminal Division sought additional facts and circumstances concerning the attorney's background and qualifications. Government connections, his relationship with the domestic concern, the nature of the African business, particular performance expectations and pending projects of special interest in Africa were also inquired into.

The original review request consisted only of the proposed contract and a cover letter. It and the responses to our further inquiries did not reflect any facts or circumstances which could reasonably cause concern about the application or possible violation of the Act. If in fact there was a reasonable concern, a mere contract provision, without other affirmative precautionary steps, would not be sufficient.

In the absence of any reasonable concern about the application of or possible violation of the Act, review of a proposed contract is not an appropriate function of the Review Procedure. The Criminal Division therefore has declined to respond to this Review Request by stating whether or not it will take an enforcement action.

No. 80-04

Date October 29, 1980

Foreign Corrupt Practices Act Review Procedure Release

The Department has reviewed a joint review request from the Olayan Group, a Saudi Arabian entity, and the Lockheed Corporation. The Olayan Group, a diversified trading, services and investment organization, and Lockheed plan to enter into certain agreements with each other for the purpose of engaging in certain prospective business transactions with the government of the Kingdom of Saudi Arabia and with the Saudi Arabian Airlines Corporation ("Saudia"). Both parties have requested a determination of the Department's present enforcement intention under the FCPA, given the circumstance that Mr. Suliman S. Olayan, the Chairman of the Olayan Group, is also an outside director of Saudia.

It is represented that Mr. Olayan will abstain from voting with respect to any matters concerning Lockheed or any of its subsidiaries which may come before the Saudia Board of Directors, so long as the Olayan Group and Lockheed continue to have any business relationship affecting Saudi Arabia and will disclose to the Saudia board the fact of that business relationship. Mr. Olayan will not use his position as a director of Saudia to influence, on behalf of Lockheed, any act or decision of the government of the Kingdom of Saudi Arabia or any department, agency or instrumentality thereof, including Saudia. Mr. Olayan holds no position in the government of Saudi Arabia, other than his position as a director of Saudia, and spends an insubstantial portion of the time he devotes to business matters in activities as a director of Saudia. His position on the Saudia board is one which is reserved, by Saudi law, for persons who are not civil servants. His position on the Saudia board and the contemporaneous activities of the Olayan Group, on behalf of Lockheed, do not violate the laws of the Kingdom of Saudi Arabia. He will receive confirmation from the Director General of Saudia that he is not, by virtue of his directorship, considered to be an officer of Saudia and that he is not authorized to act in any capacity for or on behalf of Saudia, other than to participate in considering and voting upon matters before the Saudia board.

Based upon all of the facts and circumstances, as represented by the requestors, the Department does not presently intend to take any enforcement action premised upon Mr. Olayan's directorship of Saudia.

The FCPA Review Letter and this Release have no binding application to any party which did not join in the request and can be relied upon by the requesting parties only to the extent that the disclosure of facts and circumstances in the request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.

In a report to Congress dated March 4, 1981, the General Accounting Office made a number of recommendations based on its study of the Act.

Among these recommendations are the following:

> GAO recommends that the Congress amend the Foreign Corrupt Practices Act to repeal the criminal penalties associated with the Act's accounting provisions. Enforcement of the accounting provisions' recordkeeping standards and internal control objectives would be through SEC civil action. However, there is still the matter of those flagrant abuses that give rise to the Act, such as the maintenance of off-books slush funds. To insure that adequate deterrents to these types of abuses exist, GAO recommends that the Congress consider legislation to establish criminal penalties for the knowing and willful falsification of corporation books and records.
>
> GAO further recommends that the Attorney General and the Chairman of SEC, with input from other interested agencies, jointly develop alternative ways to address the ambiguities in the antibribery provisions.

Would you please comment on the GAO recommendations? What other policy changes are advocated by your department?

Does the Justice Department agree with the conclusions of the GAO report concerning the impact of the act in terms of discouraging exports? Do the export disincentives reported by companies in the GAO survey result from the intended or unintended effects of the Act?

Regarding the policy changes relating to the Act and the GAO's recommendations, as you may know, the Cabinet Trade Policy Committee is in the process of formulatng an Administration position on these issues.

Special Prosecutor Legislation

The Public Integrity Act establishes procedures for the recusal of the Attorney General and Department Officials in matters involving high-level federal officials. Have you reviewed this statute and established procedures for dealing with matters which may fall under its provisions? Specifically, how will you deal with recommendations from sections within the Department to seek the appointment of a Special Prosecutor?

On January 14, 1981, the Attorney General submitted a letter to the Director of the Office of Government Ethics outlining those official matters which would require his disqualification. This letter was formally promulgated as policy to Department of Justice personnel on February 10, 1981. A copy of the letter is attached. A similar letter from the Deputy Attorney General was submitted to the Director of the Office of Government Ethics on January 30, 1981 and the Department of Justice personnel on February 23, 1981. A copy of these letters are also attached.

January 14, 1981

Mr. J. Jackson Walter
Director, Office of Government Ethics
1717 H Street, N. W.
Washington, D. C. 20006

Dear Mr. Walter:

Upon my confirmation as Attorney General of the United States, I shall disqualify myself by an appropriate written Department of Justice directive, which will be made available to this office, from all of the following:

1. Any particular matter in which any party directly involved in such matter is represented by Gibson, Dunn & Crutcher.

2. Any particular matter as required by 18 U.S.C. § 208.

3. Any particular matter in which Gibson, Dunn & Crutcher represents any party which representation in such matter existed during the time that I was a partner in Gibson, Dunn & Crutcher including, but not limited to, any such matters in which I participated personally and substantially.

4. Any matters directly involving clients of Gibson, Dunn & Crutcher which are listed on Attachment A and for which I had principal or substantial responsibility.

5. In addition, I intend to disqualify myself on any matter in which it appears desirable for me not to personally or substantially participate in order to avoid a possible appearance of impropriety (even if there is a lack of an actual conflict of interest). Such a policy, to which I am committed, will avoid any actual or apparent conflict of interest between my duties as an officer of the Government and my personal financial interest while, at the same time, enabling me to fully participate in policy decisions as Attorney General.

Very truly yours,

William French Smith

ATTACHMENT A

Metromedia, Inc.
Southern California Edison
Pacific Lighting Corporation
California Brewers Association
California Federal Savings and Loan
Irvine Company
Kay Springs Inc.
Occidental Life Insurance
Pacific Resources

February 23, 1981

TO: Heads of Offices, Bureaus, Boards and Divisions

FROM: Edward C. Schmults
Deputy Attorney General

RE: Conflict of Interest Disqualifications

Please find attached a copy of my letter of January 30, 1981, to the Director of the Office of Government Ethics setting forth my policy with respect to avoiding any conflicts of interest during my tenure as Deputy Attorney General. As indicated in the attached letter, I will disqualify myself from acting in respect of any of the categories of matters or cases enumerated therein.

Any matter falling within any of the foregoing categories should instead of being referred to or raised with me, be referred directly to the Associate Attorney General. Questions as to the nature or scope of these categories should be referred to the Executive Assistant to the Deputy Attorney General.

This policy is effective immediately.

Thank you for your cooperation.

January 30, 1981

Mr. J. Jackson Walter
Director, Office of Government Ethics
1717 H Street, N.W.
Washington, D. C. 20006

Dear Mr. Walter:

Upon my confirmation as Deputy Attorney General of the United States, I shall disqualify myself by an appropriate written Department of Justice directive, which will be made available to this office, from all of the following:

1. Any particular matter in which any party directly involved in such matter is represented by White & Case.

2. Any particular matter as required by 18 U.S.C. Sec. 208.

3. Any particular matter in which White & Case represents any party which representation in such matter existed during the time that I was a partner in White & Case including, but not limited to, any such matters in which I participated personally and substantially.

4. Any matters directly involving clients of White & Case which are listed on Attachment A and for which I had principal or substantial responsibility.

5. In addition, I intend to disqualify myself on any matter in which it appears desirable for me not to personally or substantially participate in order to avoid a possible appearance of impropriety (even if there is a lack of an actual conflict of interest). Such a policy, to which I am committed, will avoid any actual or apparent conflict of interest between my duties as an officer of the Government and my personal financial interest while, at the same time, enabling me to fully participate in policy decisions as Deputy Attorney General.

Very truly yours,

Edward C. Schmults

ATTACHMENT A

Prudential Insurance Company
CIBA-GEIGY Corporation
Fiat Credit Services, Inc.
Morgan Stanley & Company, Inc.
Estate of Dewey J. Awad
Detroit Edison Company
Tucker Anthony, R. L. Day
Deutsche Bank

Recommendations from the Sections regarding Special Prosecutor appointments will continue to be handled pursuant to procedures established by Attorneys General Bell and Civiletti. Under these procedures, whenever the Special Prosecutor Act is triggered, the preliminary investigation will be assigned to the appropriate Section which will conduct the investigation and make a recommendation regarding the appointment of a Special Prosecutor. This recommendation will be reviewed by the Assistant Attorney General for the Criminal Division, the Associate Attorney General and the Deputy Attorney General and the Attorney General will make the final decision. If any Special Prosecutor decisions entail the sort of potential conflicts of interest set forth in the Attorney General's letter to the Office of Government Ethics, he would disqualify himself and the final decision would be left to the Deputy Attorney General.

Given the fact that Special Prosecutors have had to be appointed several times in the last few years, have you considered whether it would be desirable to provide for the appointment of a single permanent Special Prosecutor?

Since October 1978 when the Special Prosecutor provision became effective there have been two Special Prosecutors appointed, one for the Hamilton Jordan-cocaine allegation, one for the Tim Kraft-cocaine allegation. Based on this record, it would be clearly inappropriate to have a permanent Special Prosecutor. There is simply insufficient work to attract an individual of the appropriate stature and it would be extremely inefficient to have a well-qualified Special Prosecutor and staff with little or nothing to do. In the opinion of the Attorney General, it would be highly undesirable to provide for appointment of a single permanent Special Prosecutor. Indeed, serious constitutional issues are raised by the present legislation.

The Public Integrity Section of the Criminal Division and the many United States Attorneys' offices have demonstrated an excellent ability to investigate and prosecute public corruption cases vigorously, fairly and impartially. Given the requirements of the Ethics in Government Act, those few corruption matters that might require appointment of a Special Prosecutor are best handled by appointment of a temporary Special Prosecutor.

It is our strong belief that justice is best served by not having independent Special Prosecutors who are unaccountable to the Department of Justice, its policies and precedents. The career Department of Justice personnel are best qualified and fully able to conduct

all federal criminal investigations regardless of the target. Any danger of conflicts of interest can be handled by disqualifications or discretionary appointment of independent counsel in the rare event that recusals will not be sufficient to avoid the conflicts of interest.

There are cases in the recent past where the letter of the law did not require the appointment of a Special Prosecutor but, where investigation by the Department was rendered difficult and serious questions of appropriateness and conflict of interest could be raised. A case in point is the Billy Carter/Lybian matter. What criteria do you intend to use should you receive allegations regarding an individual who has a close and obvious friendship and relationship with the President?

The Attorney General believes that the Department of Justice can and should handle virtually all federal criminal investigations. While one can never prevent people from raising "serious questions of appropriateness and conflict of interest," these questions are, for the most part, more imagined than real. If the case arises involving someone with a relationship with the President, if not otherwise covered by the Ethics in Government Act, it is the Attorney General's intent that it be handled, as all other criminal cases, by professional Department investigators and prosecutors with the ultimate decisions made wholly on the merits of the case.

Immigration Policy

Last week we heard from the Select Commission on Immigration and Refugee Policy. Do you agree with the Commission's recommendations to increase enforcement and legalize the existing undocumented alien population? When will you present views or recommendations to Congress?

As I mentioned earlier, the recommendations of the Select Commission on Immigration and Refugee Policy are being thoroughly reviewed, and policy recommendations made to the President next month. This will be the focus of a special Interagency Task Force established by the President. I chair that Task Force, and we will report our recommendations to the President in early May. After the President has had the opportunity to review our recommendations, he will present his proposals to the Congress.

Questions Submitted by Senator Hollings

Department Priorities

At a press conference on March 5 you announced a priority on violent crime and the creation of a task force to recommend federal action in this area. The previous Administration focused their efforts on organized and white-collar crime with the idea that violent crime became more of a local matter. However, the Carter Administration also cut the federal assistance to state and local law enforcement agencies and President Reagan is apparently endorsing those reductions.

President Reagan is eliminating $6,300,000 of the funds provided this year for state and local drug and organized crime intelligence units. Yet it is expected that state and local agencies will assume a greater role in drug enforcement. How is Sheriff McCutcheon down in Beaufort, South Carolina going to contend with the tremendous influx of drugs into his area if he is denied intelligence and other basic assistance?

As you know, the Department is giving enforcement priority to such areas as organized crime, white-collar crime and narcotics trafficking. In certain instances, we are increasing resources for these programs at the federal level. It is our hope that state and local governments will place a similar priority on the use of their resources, in order to continue those enforcement activities with a record of success.

It should also be noted that the Congress, through its Budget and Appropriations Committees, made the decision to terminate federal assistance to state and local law enforcement before the Reagan Administration took office. The Task Force on Violent Crime to which I referred in my earlier testimony will examine the issue of federal assistance to state and local law enforcement and the wisdom of establishing a new federal role.

The Carter priorities had the effect of dramatically lowering the federal prison population as the FBI followed the quality over quantity concept. At the same time state prisons are severly overcrowded as they apprehend the bank robbers and other criminals consigned to them. President Reagan has withdrawn the scant $3,000,000 requested to make a start to improve local jails. If we are going to dump these cases on the localities, doesn't there have to be a concomitant responsibility to provide basic facilities?

It is true the "quality over quantity" investigative case concept pursued by federal investigative agencies during the past few years has helped to reduce federal prison overcrowding. The use of alternative community treatment facilities for federal prisoners prior to release has also helped to reduce the federal prison population.

It has not been the Department's intent to place undue burdens as to the responsibilities for prosecution of certain categories of cases on local governments. Those types of cases were of a concurrent jurisdiction nature. By allowing state and local jurisdictions to assume responsibility for these cases, we were able to release manpower at the federal level to pursue cases involving types of crimes which knew no local or state boundary. Assuming the drop in the federal prison population resulted in a like gain in the state and local prison population, the decreased federal prison population would have accounted for two to three percent of the current state and local prison population.

The previous Administration's proposal to start a local jail improvement program with a first year cost of $3,000,000 has been withdrawn, in part, because of the need to reduce federal spending. There is no authorization to begin such a program, and the Congress has not passed the Department's FY 1981 authorization bill which did request the authority to begin a local jail improvement program. We are again proposing in our FY 1982 authorization bill that the statutory authority be provided the Department to engage in such a pilot program should funds become available.

Would the Department favor Senator Dole's bill to assist in the construction of state and local jails and prisons?

The Department does not believe it has a responsibility to provide basic state and local prison facilities. I do not believe the Department or the Administration is in a position to support Senator Dole's bill which would create a Criminal Justice Facilities Administration in the Department which would be authorized $6.5 billion over a seven-year period "to provide financial assistance to the states to undertake comprehensive criminal justice construction programs to improve the criminal justice system of the states." I agree with Senator Dole that his bill could well serve as an effective catalyst for discussing the need for criminal justice facilities construction at the state and local level.

As the Constitution reserves to the states the primary police power, it concomitantly places the responsibility for investigation, prosecution, and incarceration or treatment of convicted persons with the states and localities.

Regarding funding for state and local criminal justice facilities, such as prisons, jails, courthouses, and police stations—I believe that revenue raising and allocation of such funds is a primary responsibility of the states and localities. The taxpayer base, both individual and corporate, is essentially the same for the federal, state and local governments. The assertion that states and localities do not have the resources to attend to their primary responsibilities and then argue that the Federal Government should tax the same taxpayer base available to the states and localities and pass the funds back to the states and localities through a grant mechanism appears cumbersome and unnecessarily unwieldy.

I believe the Federal Government can play a role as a clearinghouse for information between the states and localities on ideas of how best to address criminal justice facilities construction issues or disseminating information on solutions found by the various states and localities relative to improving criminal justice facilities.

Another alternative which should be considered is whether current public works funds, which are a part of the overall Federal Government's budget base, should be reprioritized to include funding for criminal justice facilities at the state and local level. Senator Dole's bill may provide the vehicle for debate on this issue.

ABSCAM

Last year our session with the Attorney General occurred within days after ABSCAM broke. The courts have subsequently validated the FBI and the Department in these cases, but we were concerned about the leaks to the media. Mr. Civiletti promised us an intensive investigation of the leaks. What were the results of that investigation?

The results of that investigation are contained in a public report which Attorney General Civiletti released on January 14, 1981. A copy of that report is attached herewith for your information.

UNAUTHORIZED DISCLOSURES REGARDING ABSCAM, PENDORF AND BRILAB

I. INTRODUCTION

During the period from approximately February 2 through February 9, 1980, a series of unauthorized disclosures appeared in the news media regarding three separate Federal criminal investigations: ABSCAM, PENDORF and BRILAB. This document describes generally the investigation into those unauthorized disclosures; the disciplinary action taken as a result of that investigation; conclusions regarding the causes of and motivations for the disclosures; and recommendations regarding remedies which might prevent such improper disclosures in the future.

The disclosures which were the subject of this investigation were of a scope and magnitude virtually unprecedented in Department of Justice history. They were not disclosures of departmental policies or policy disputes -- they were disclosures of sensitive, confidential information developed during pending criminal investigations. These kinds of disclosures can jeopardize the very investigations the Department is charged with conducting -- by endangering agents and cooperating parties, and by alerting subjects to information which may enable them to evade detection or successful prosecution. Such disclosures may also jeopardize the process which is established by our system of justice as the principal objective of criminal investigations: fair trials for defendants, and for the government, in the prosecution of charges arising out of the investigations. Moreover, unauthorized disclosures of investigative information may cruelly wound the truly innocent, damaging their reputations beyond hope of recovery. For these reasons, such disclosures are plainly prohibited by Department regulations, FBI operating procedures, and the Code of Professional Responsibility. E.g., 28 CFR §50.2; FBI MAOP, Part I, §1-19(2), at 11; Code of Prof. Resp. DR 7-107(A).

In conducting this investigation, the Department has been extraordinarily sensitive to the other important public interest which must be balanced against the concerns of damage wrought by unauthorized disclosures of investigative information. The press has a legitimate and critical role in covering the criminal process at every stage -- investigative, prosecutive and judicial -- on the streets and in the courts. Although the government has an obligation to prevent the press from finding out the kind of investigative information that was disclosed in this case, the press is legally free to print whatever it does find out. Morever, there are numerous other kinds of information which the government has no business keeping from the press, or inhibiting its employees from transmitting to reporters.

To balance these concerns, we have sought to conduct this inquiry in a way that minimized any possible inhibition on press activities and any adverse effect on relationships with "sources" or on availability of information. We have recognized that the mere fact of the inquiry might have some effect in discouraging contacts with the media. But, as described below, we have not said or done anything to chill legitimate contacts. A serious, responsible inquiry -- which we hope this has been -- should not have that effect. The results of the investigation, rather than the fact it was done, should be the source of any lasting impact. The results should speak for themselves.

A. Investigative Procedures

The decision was made early in the investigation, at the Attorney General's direction, to conduct it as an administrative inquiry, without foreclosing the possibility that a criminal investigation might be commenced if specific evidence of criminal violations were found. It was essential to proceed as quickly and completely as possible, exposing the full range of any government misconduct. An administrative inquiry appeared to be the most thorough and expeditious method to develop the facts. A criminal investigation was expected to encounter objections from potential witnesses and subjects, generally eliciting less candid and prompt cooperation. Equally important, there was no indication of criminal intent, and hence, no justification for invoking criminal investigative processes such as grand jury or witness immunity.

Every person interviewed was informed of the administrative nature of the inquiry. There were no grants of immunity, either administrative or criminal, of any kind.

The investigation was conducted through the FBI Office of Professional Responsibility, with substantial and continual guidance from Michael Shaheen and his staff in the Department of Justice's Office of Professional Responsibility. It was supervised jointly by Richard Blumenthal, the United States Attorney for Connecticut, and by John Otto, Executive Assistant Director of the FBI. There was agreement on all major policy decisions and investigative steps.

The investigation was conducted through three separate teams of agents and attorneys assembled specifically for this purpose. Thirty agents were selected from FBI Field Offices; each team of ten agents was led by an Inspector. All were chosen for their demonstrated competence as investigators. Five attorneys were selected following consultation with United States Attorneys and Department of Justice officials. Each was a Chief Assistant in his respective office, among the Department's most experienced and able investigative and trial lawyers. None were from offices involved in any way in the underlying investigation. The teams investigating ABSCAM and BRILAB leaks each were assigned two attorneys, and PENDORF was assigned one. While each investigation was relatively compartmentalized in order to maximize security, general investigative insights were shared; specific results were communicated whenever advisable, and were exchanged more fully at later stages of the inquiry.

The first task of the investigation was to determine the identities of all agents or attorneys who had knowledge of each operation prior to the disclosures. All of these individuals were contacted and interviewed. Almost all cooperated by providing signed, sworn statements describing the extent of their knowledge, the number and substance of their contacts with particular members of the press, and other pertinent details. Reinterviews were conducted with many of these individuals in order to clarify points of conflict or confusion, and elicit additional information. Some provided additional sworn statements, at the investigators' request. Efforts also were made to explore and exhaust other sources of information. Records of toll calls made from telephones located both in government offices and homes were obtained by voluntary disclosure, when requested.

Selective and judicious use was made of the polygraph as an investigative technique. Requests to submit to polygraph examinations were made pursuant to the policy and procedure established by the Attorney General's memorandum of May 14, 1980, and the Director of the FBI's directive of May 13, 1980. As to each potential polygraph candidate, a judgment was made

on the basis of all available information whether a substantial objective basis existed to request an examination. Requests were made to assess conflicting versions of material facts, or to resolve other questions raised by circumstantial evidence or inconsistent statements. Only when there was a substantial objective basis, and when other available investigative measures had been fully utilized, was any individual requested to submit a polygraph examination. Each individual was informed at the time of the request that an adverse inference might result from a refusal and that the results could be used in disciplinary decisions. While every individual interviewed was asked whether he or she would be willing to submit to a polygraph examination if requested to do so, actual requests were made only of 18 individuals. Three additional individuals volunteered for examinations.

The scope of this investigation has been unusually broad. Some 1,253 interviews have been conducted, consisting of 259 in connection with the ABSCAM disclosures, 290 in regard to PENDORF and 704 for BRILAB. Members of the investigative teams have visited a total of 77 cities in order to obtain interviews and sworn statements. Detailed questions have been asked of all persons regardless of present or former position in the government. Interviews have been conducted of individuals who were never government employees but who gained knowledge of the pertinent criminal operations.

One important limitation has been rigorously observed in accordance with the Attorney General's instructions. No approach has been made to any member of the news media or anyone associated with any news media organization. No information has been solicited from any such person. The policy of the investigation has been that we never would reject information if volunteered by newsmen, but we never would request them to divulge anything. Contacts creating even an appearance of approaching the press were scrupulously avoided. In conducting the investigation, the investigators sought to minimize any potential chilling effects on press activities. They emphasized, as the Attorney General stated publicly, that this was an investigation of misconduct on the part of government employees, not of the press. As a practical matter, the possibility of obtaining information from reporters regarding their sources within the government seemed highly remote, even under the threat of compulsion, and almost certainly would have resulted merely in a distracting and divisive confrontation.

Another limitation has been observed: no use has been made of transcripts, testimony or other records of proceedings in connection with criminal charges now pending as a result of the ABSCAM and BRILAB investigations. No access to any such materials has been sought. The objective has been to conduct this inquiry as an independent, purely administrative matter, without even an appearance of exploiting testimony compelled or offered in criminal proceedings. Also, sequestration orders imposed on potential witnesses in those proceedings arguably apply to individuals conducting this inquiry, making a review of others' testimony improper. Any additional facts relating to the leaks revealed during criminal litigation may be given such use as is appropriate in the future.

Within these constraints, and the inevitable limitations of time, the investigation developed evidence supporting a number of general findings:

Disclosures appear to have resulted from separate, individual action on the part of various individuals, without approval or authorization from the Attorney General, FBI Director, or other managing officials of the Department of Justice, and without any general agreement or conspiracy.

No evidence exists of any intent to obstruct justice, or any direct personal financial gain.

Sufficient evidence existed to initiate disciplinary actions against specific individuals, including both attorneys and FBI agents.

Motivations appear to have been as varied as the types of disclosures, ranging from pride and self-promotion to pressures of preserving and protecting a covert investigation.

Disclosures adversely affected each of the criminal investigations -- by endangering agents and compelling a premature end to the covert stage in BRILAB; and by alerting potential defendants, and providing support for defense motions in all three.

B. Disciplinary Procedures

Based on the information and records generated by the investigation supervised by Richard Blumenthal and John Otto, recommendations regarding disciplinary actions for specific individuals were made to the Deputy Attorney General by Michael Shaheen, Counsel of the Office of Professional Responsibility, Department of Justice, and to the Director of the FBI by the Administrative Services Division of the FBI. Where the Deputy or Director concluded that a preponderance of evidence on the record established that the employee was responsible for unauthorized disclosures or other violations of Department or Bureau regulations, including regulations requiring cooperation with internal inquiries, appropriate disciplinary action was initiated and in most cases has been completed.

The principal support for most of the disciplinary findings were admissions by the employees themselves, although in a few instances circumstantial evidence provided the primary support. While the polygraph was used in the investigative phase as described above, the use of its results in determining discipline was limited. Polygraph results were neither the sole nor determinative basis for any disciplinary decision. The polygraph was not used to prove allegations not independently established by other circumstantial evidence. Its results were used solely to reinforce conclusions otherwise supported by circumstantial evidence. Applying this standard, adverse inferences were drawn in only two cases in which the polygraph was used or refused.

II. DISCIPLINARY ACTION

As a result of the administrative inquiry just described, seven individuals were disciplined. These include a United States Attorney, a First Assistant United States Attorney, an Assistant Director of the FBI, three FBI field office supervisors, and one Special Agent. These seven were not the only individuals who disclosed confidential, investigative information. Nor were they the only individuals about whom the investigative team developed evidence raising a suspicion of unauthorized disclosures. However, their cases are the only ones in which a preponderance of the evidence on the record established responsibility for improper disclosures or other violations of Departmental or Bureau regulations.

In this section, the disciplinary action taken against these individuals, as well as the basis for that action, is described. This section does not include, because it would be fundamentally unfair to do so, information developed by the investigation concerning other individuals about whom

evidence was either non-inculpatory or insufficient to establish culpability under the standard described above. Nor does it include information developed concerning the individuals who were disciplined, if that information was not used as the basis for such discipline.

Since the disclosures and before the completion of the investigation, a few employees of the Department of Justice, including the FBI, resigned or retired, and thus could not be considered for disciplinary action in an administrative proceeding. Information regarding these employees was, however, reviewed by the Department under the same standard applicable to present employees. That review concluded that the evidence regarding these employees was either non-inculpatory or insufficient to establish culpability under the standard described above.

A. ABSCAM

1. Peter F. Vaira, Jr., United States Attorney for the Eastern District of Pennsylvania, received a letter of censure from the Deputy Attorney General. This action was based on the following facts.

On the evening of February 2, 1980, Mr. Vaira learned that NBC and The New York Times had obtained information about ABSCAM. Convinced that The Philadelphia Inquirer was unaware of the story, he telephoned a reporter with that paper to alert her to The New York Times story and to inform her that her office was involved in the case. Vaira spoke to her four more times the night of February 2, and confirmed information about the ABSCAM investigation that she had obtained elsewhere that evening. Mr. Vaira voluntarily provided the foregoing information about the nature and extent of his contacts with the press concerning the ABSCAM investigation.

2. John F. Penrose, First Assistant United States Attorney, Eastern District of Pennsylvania, will receive a letter of censure from the Deputy Attorney General. This action was based upon the following facts.

Mr. Penrose was responsible for a number of quotations that appeared in The Philadelphia Inquirer and The Philadelphia Bulletin without attribution to a named source. For example, he told reporters that the investigation had started as an ordinary sting operation, that the undercover investigation in Philadelphia had lasted less than ten days, that fictitious Arab words had been used, and that the undercover agent used a specified fictitious name and came from a specified city in Pennsylvania. Concerning a target and eventual defendant, Mr. Penrose said to a reporter,

> He is amazing. It is amazing to all of us that we've never heard of him before. He was not known to us as a key player or a guy with this kind of incredible political muscle . . . we were as flabbergasted as everbody else that this clown could deliver who he said he could deliver.

Mr. Penrose voluntarily provided the foregoing information about the nature and extent of his contacts with the press concerning the ABSCAM investigation.

3. Special Agent Quentin G. Ertel, Jr., Media Representative in the New York FBI Office, has been suspended from work without pay for thirty days, placed on probation, and reassigned from his press relations responsibilities. This disciplinary action was taken for two reasons.

First, in the course of handling an inquiry from a New York Times reporter on January 30, 1980, Ertel learned of Bureau instructions that all press inquiries concerning ABSCAM should be referred to the Headquarters Press Office. Contrary to these instructions, on Janury 31, 1980, he urged a Strike Force Attorney involved in ABSCAM to meet with the New York Times reporter.

Second, a preponderance of the evidence establishes that Mr. Ertel was the source of a February 4, 1980, New York Times article which indicated that a subject of the ABSCAM inquiry was cooperating with the prosecution. Ertel was present at a meeting when the subject agreed to cooperate. After Ertel left the meeting, however, the subject changed his mind and refused to cooperate. In addition, another subject arrived to discuss his possible cooperation. That the February 4 article (written by the reporter with whom Ertel had been in contact) mentions neither of these two late developments is strong circumstantial evidence that Ertel, who left the meeting and did not know of the developments, was the source for the article. This circumstantial evidence is reinforced by Ertel's refusal to take a polygraph exam despite an official request that he do so.

B. BRILAB

1. Oliver B. Revell, Assistant Director of the FBI, has received an official letter of censure from the Director. This disciplinary action is based on his admission that for several years he had exchanged generalized confidential information with an investigative reporter for the Daily Oklahoman. Mr. Revell admits receiving inquiries about BRILAB from the reporter, confirming to him the existence of "similar" FBI investigations, volunteering that interesting disclosures would soon be forthcoming, and mentioning the name of one of the BRILAB suspects. Following their conversations, this reporter did publish stories about BRILAB.

While it is not certain that Mr. Revell was responsible for any of the BRILAB disclosures, which he denies, his poor judgment in participating in these and similar conversations with the reporter on investigative matters is deemed to merit censure.

2. Special Agent Robert John Barron, a supervisor in the Los Angeles FBI Office, was censured by the Director on the eve of his retirement. Mr. Barron was eligible to retire when the internal review was concluded and his veterans' preference procedural rights would, as a practical matter, have precluded more serious discipline.

The Bureau took disciplinary action against Barron for two reasons. First, although he never acknowledged his culpability, a preponderance of evidence on the record establishes that he was responsible for extensive disclosures to a Los Angeles Times reporter concerning the BRILAB investigation. Specifically, the evidence indicates that (1) Barron was intimately familiar with the details of the BRILAB investigation, including the information that appeared in a February 9, 1980, Los Angeles Times article; (2) he admits agreeing to give the Los Angeles Times reporter a story when possible, and in view of this

commitment says, "I did not feel it would be right for (the reporter) to be 'scooped' on the BRILAB story by other newspapers . . . ."; (3) the Los Angeles Times reporter did not contact any other Agents familiar with the BRILAB investigation; (4) Barron was in contact with the reporter on a least three occasions in the few days immediately prior to the publication of the February 9, 1980, story, which contacts Barron failed to mention when initially questioned; and (5) the sworn statement of another Department of Justice employee states that the Los Angeles Times reporter said, on February 8, 1980, that Barron had spoken to him about the BRILAB investigation. This circumstantial evidence of Barron's culpability is reinforced by his refusal to submit to a requested polygraph exam concerning the BRILAB disclosures, and the adverse inference from his refusal to submit to the exam is strengthened by his willingness to take a polygraph exam in connection with other unauthorized disclosure investigations.

In addition, Mr. Barron was disciplined for his lack of candor and cooperation with the administrative inquiry.

3. Special Agent Jack D. Blair, a supervisor in the San Diego FBI Office, was reduced in grade from GS-14 to GS-13; removed from a supervisory position; and placed on probation. This action was taken for two reasons. First, in the course of the inquiry, Mr. Blair admitted responsibility for unauthorized disclosures to a San Diego Union reporter of confidential information about another investigation not the subject of this inquiry. Blair acknowledged these disclosures during the inquiry into his relationship with the San Diego Union reporter, who had written stories containing confidential information about the BRILAB investigation. However, the inquiry did not establish that Blair was responsible for disclosures of information about BRILAB itself.

In addition to his admitted disclosure of information about the other investigation, Mr. Blair is also being disciplined for his lack of candor during the administrative inquiry.

C. PENDORF

1. Administrative action has been initiated against Special Agent Cluster Hall, Jr., a supervisor in the New Orleans FBI Office who was assigned to the Las Vegas Office at the time of the disclosures. The action would reduce his grade from GS-14 to GS-13; remove him from a supervisory position; and place him on probation. The action has been proposed for two reasons.

First Mr. Hall admits responsibility for unauthorized disclosures of confidential information about the PENDORF cases to an investigative reporter for the Wall Street Journal.

Second, in addition to his admitted disclosures of confidential information, Hall also merits discipline for his lack of candor and evasiveness during the administrative inquiry.

III. CAUSES AND MOTIVATIONS

The sheer size and scope of ABSCAM, PENDORF and BRILAB gave rise to a substantial risk of premature exposure. In light of how many people they involved and how long they operated, preserving them as covert investigations for so long was no small achievement. The operation of Title III (of the Omnibus Crime Control and Safe Streets Act of 1968) wiretaps in BRILAB and PENDORF required assignment of a very large number of agents during a comparatively extended period of time. Accompanying applications to the courts for Title III reauthorizations were summaries in the form of affidavits and other documents, some of which were required to be made public eventually.

The risk of exposure also was increased tremendously by an expansive dissemination of information. Communication occurred through countless teletypes, airtels, memoranda, telephone calls, conferences and other means. Agents and attorneys not directly involved in the investigations were made privy to information since the targets were of wide, sometimes long-standing investigative interest. Whether such dissemination was necessary is assessed best by others. Many involved in the investigation, however, believe that lax security contributed to a general climate of opinion or attitude that made leaks more likely.

The risks of leaks was greatly enhanced, as well, by the sensitive and potentially sensational subject matter of these investigations. The stakes in each were substantial, as was the anticipated impact of possible prosecutions. Enormous gain or loss could be expected for all whose lives and careers were touched -- not merely targets, but investigators and prosecutors, as well as their agencies. All knew that much would depend on how the press depicted them. The first factual version made public could be expected to leave a lasting impression.

One apparent motivation for disclosures involved, ironically, an effort to preserve or protect ongoing investigations in a covert phase. As Department of Justice officials learned of leaks and were confronted by reporters, some in effect entered into agreements or understandings, explicit in varying degrees. Reporters were persuaded to hold their stories; something would be given later in return. In ABSCAM, for example, alarm spread as officials became aware that Newsday and NBC had the story. Statements and circumstantial evidence suggest that at least some information was provided on the understanding that no story be used until the interview phase was completed on February 2nd. Awareness that The Los Angeles Times knew of an informant's cooperation may have prompted an analogous arrangement in BRILAB. This motivation, however, could not have been the reason for an initial or original leak to Newsday or NBC in connection with ABSCAM, or to any of the other media organizations that had stories concerning PENDORF or BRILAB. In the leak of information to The Philadelphia Inquirer and The New York Times regarding ABSCAM, for example, reporters did not have detailed information until virtually the end of the investigation, well after the initial leaks. No evidence exists that either received information as a quid pro quo for holding stories they already had.

Promoting institutional image -- either of the Department of Justice generally, or the FBI specifically -- was another probable motivation. Media representatives are now assigned full-time to press activities in nearly every FBI office. A sizable staff of Special Agents is similarly assigned at Headquarters. The subject matter of the investigations involved here, and their extraordinary success, made

them potentially rich sources of pride and acclaim. Investigators and attorneys working on them, as well as media relations people, had a natural interest in assuring that their stories were told, and told well. Many of them perceived their respective offices as making special contributions to the investigation, and deserving of particular credit in the competition for publicity that might follow.

Rivalry and competition among offices and agencies occurred in each of these investigations. While natural, healthy, and inevitable to an extent, the tensions resulting from management of multi-district inquiries were conducive to unauthorized disclosures. In at least one instance, such disclosures may have been motivated by a personal animus or bias resulting from present or past disputes. Whether the disagreements concerned major policy decisions, or small matters of logistics, they diluted feelings of loyalty and trust that normally operate among law enforcement people to discourage leaks.

Enhancing institutional image may have verged on self-promotion to some degree. The two motivations are difficult to distinguish precisely. Favorable publicity helps sell books and enhances employment opportunities outside the government. It also assists an agency in dealing with Congress and the public.

The commendable idea of "openness" in government sometimes may have been used as a justification for promoting individual careers or institutional image. It also helped create a climate conducive to close personal and professional relationships with reporters. There was nothing regarding any of these investigations that seemed to bear unfavorably on the government -- nothing being concealed that called for "whistle blowing." Openness appeared to be in the government's interest -- especially, openness to "friends." Some reporters were regarded as "friends" because they had done favorable articles on past cases, or even furnished tips or leads. One actually had been treated officially as a source or informant, not merely a friend. The context of some leaks was an ongoing flow of information both ways -- a pattern of dealing characterized by candor and confidence.

Some of the leaks may have resulted from misplaced trust or misunderstandings. Interviews with agents and attorneys have indicated, for example, widely divergent views as to the meaning of "off the record." The meaning of the term to some is that particular information disclosed to reporters may not be used at all. To others, it is that the information must be confirmed by other sources, without attribution to them. To still others, it means that the information may be used on a background basis without direct attribution. A number have lamented the ambiguity after seeing in print sentiments or information they believed they were conveying in confidence". */

Moments of weakness or general naivete may account for some of the disclosures. Individuals unaccustomed to dealing with the press may have been more susceptible to the aggressive and assiduous reporting techniques sometimes employed -- techniques described by the Attorney General in his admonitions to Department of Justice employees regarding leaks on March 5, 1980. The excitement generated by these

* There are indications that information given to at least one reporter "off the record" may have been shared by him with others, diluting its confidential character and prompting inquiries.

investigations, especially as they neared an end or particularly successful turning point, added to the risks of too much talk. Initial leaks may have encouraged disclosure of other aspects of the same investigation. The ABSCAM leak may have precipitated subsequent disclosures in BRILAB and PENDORF.

The role of government informants in leaks cannot be ignored and may have constituted a contributing factor in one leak. The motives for such disclosures may be as complex and varied as the individuals themselves and cannot be analyzed reliably in the absence of additional information. Personal gain appears one likely motivation.

While none of these causes and motivations may be particularly noble, no evidence exists of payoffs or obstruction of justice. Nor is there any indication that the leaks were prompted by personal animus or other bias or prejudice against any of the potential targets.

IV. REMEDIES

Although disciplinary sanctions against the individuals deemed culpable for leaks in ABSCAM, PENDORF and BRILAB may serve to deter recurrences of such misconduct, as well as to vindicate the interests of justice, the investigation indicates that a number of more general remedial measures should be considered.

1. Improved Security Procedures

More stringent procedures regarding treatment of sensitive files and information, combined with narrower dissemination of such information among offices or individuals, should be adopted in undercover operations. An actual "need to know" should be the criterion for distribution of information. Mere awareness of an operation such as ABSCAM, PENDORF or BRILAB should be strictly limited.

The theory and rhetoric of undercover operations currently may incorporate this approach, but the practice seems otherwise. Whatever the procedures set forth in manuals and regulations, this investigation has dramatized the deadness of that letter. Safeguards that have made the FBI an agency that performs so discreetly and effectively in foreign counterintelligence tasks should be applied to operations and procedures aimed at organized crime and political corruption.

Dissemination of materials associated with Title III intercepts should be subject to stringent procedures and safeguards similar to those that now apply to distribution of grand jury materials. These should be implemented by Department of Justice regulations. Compliance with them should be subject to close oversight.

As to all materials associated with undercover operations, one simple and highly desirable measure would be to mark and log copies of documents, thereby maintaining a record of distribution. Numbers of copies should be kept to a minimum, and access to them limited. Attorneys should be encouraged to be more sensitive to security considerations involved in handling and storing of documents and other materials.

Different methods of structuring undercover investigations are worthy of consideration. One alternative model deserving study would involve a small investigative team operating

out of a single city, working full time on one case and traveling to locations where covert activities become appropriate. This approach is distinguishable from the current typical method of operation involving a large number of agents and attorneys scattered among offices around the country with varying degrees of participation, time commitments, supervision, and authority. Rivalries that sometimes arise during investigations would be reduced by temporary assignments to a single, relatively compact team operating under a tight command structure and reporting to a single official responsible for making and enforcing decisions. The base of the team need not be Washington itself, but a clear geographical center as well as chain of organization would appear to be advisable. This concept at least deserves study, bringing to bear insights and critical scrutiny from the Criminal Division, U. S. Attorneys, and other law enforcement agencies.

2. General Press Policy Clarifications and Enforcement

The leaks here could have been avoided by strict adherence to the pertinent regulations and guidelines regarding press contacts. Compliance with these policies should be given greater attention. One means of heightening awareness of the dangers and pitfalls of straying from these rules would be to hold training sessions for all agents and attorneys, especially those who have positions of authority that put them in contact frequently with the press.

The response "no comment" should be standard operating procedure in connection with an inquiry concerning a pending investigation or case. This rule now exists, but often is honored in the breach. The investigation indicates that a "no comment" may be a futile gesture unless it is expressed vigorously at the outset of a conversation and insistently followed afterward. Mere silence may have the effect of confirming facts if a reporter believes that the official will deny misinformation.

Conversations "off the record" should be avoided. The lack of clarity that adheres to that term should give pause to prosecutors and investigators. As a practical matter, it is the reporter who has the last word as to what appears in print and how it is portrayed in context and attributed. Accountability that accompanies direct attribution can be highly sobering -- helping to prevent the spreading of speculation of rumor disguised as fact.

Whenever comment regarding a pending investigation or case is made, the United States Attorney or Section Chief should be the predominate, if not exclusive, spokesman for the office. In theory, this proposition is espoused by almost all. In practice, like other rules discussed here, it is often ignored. The reasons for it are self-evident. It is the U.S. Attorney or Criminal Division Section Chief who ought to speak publicly for an office when the questions concern investigative information. He or she is ultimately accountable for the activities of the office -- the one responsible for major policy and personnel decisions, and the most likely to have the knowledge, experience and temperament necessary for the difficult task of dealing with the press. In the absence of specific authorization, substantial contacts by subordinates with reporters regarding investigative matters should be avoided.

General press policies in a number of areas also merit critical review. At a time when the Department of Justice, including the FBI, has sought to be more open and forthcoming,

there may be risk of some inappropriate promotion of its activities.

At the same time, in fairness to the FBI and other investigative agencies, better means must be found to give credit where it is truly due in connection with successful cases. Where the first public appearance in a case is a Grand Jury indictment, the law enforcement agency involved in the investigation may receive little or no real public recognition, though its contribution may have been critical. Often, the person most deserving of praise is the agent on the street, who may endure the greatest danger and discomfort. Upon indictment, it is the U.S. Attorney and his office who control the public aspect of the proceedings, issuing press releases that sometimes make no mention of the agency. Yet, the attorneys' work may have been only a part of the total effort. This fact creates a temptation to leak before a case reaches that stage. There should be a means for assuring that the agency receives proper recognition.

3. Reporters as Informants

In general, the notion that relationships with reporters can be a two way street, or should be so, bears critical scrutiny. While confidential information concerning criminal wrongdoing may be provided by reporters to law enforcement authorities on an "off the record" basis, such tips or leads should be regarded with some caution. Wholly apart from questions as to the reliability of the information, the relationships are likely to lead to difficulties.

Under present regulations, explicit approval must be obtained from FBI Headquarters to designate any newsman formally as an informant, and in practice approval is given only sparingly and selectively. The mere possibility of informant status, however, fosters and legitimizes a range of relationships and dealings that may be perceived as leading eventually to formal designation. Individuals do not become informants instantaneously: they engage in a process of conversations and exchanges necessary to create mutual confidence and trust at some personal level. Where the potential informant is a newsman, this process itself may be dangerous. It exerts pressures and conflicts tending to compromise the agent or attorney, if not the reporter. Neither side is likely to get anything without giving something.

The value to the government of tips or leads from informant newspeople is likely to be marginal at most. Truly trustworthy information probably will find its way into the public domain on the air or the printed page, since reporters are not likely to sit for long on a good story. Information that every citizen has a legal or moral obligation to provide, such as knowledge of an imminent or ongoing crime threatening life or property, will be furnished by reporters to the same extent regardless of whether they are informants. Newsmen need not be informants to volunteer information. Communication in other forms poses fewer dangers to law enforcement interests, as well as to our democratic institutions and system of free expression.

4. Media Representatives

Insights gained during this investigation -- as well as some specific investigative results -- suggest that a thorough reevaluation of the role of media representative is required. In addition to sometimes wasting scarce manpower, the position by its mere existence creates relationships and conflicts, often subjecting agents to pressures and expectations that are virtually impossible to

meet successfully. They are expected to advance a favorable view of investigative activities without compromising investigations, inappropriately commenting on pending litigation, or alienating other agencies that may be involved in cooperative ventures. The task is extraordinarily difficult, and judgments must be made against the background of demands for "openness" and candor on the one hand and security considerations on the other.

An alternative to the present media representative role would be to make the Special Agent in Charge chief spokesperson for the office as formerly was the practice, while assigning an agent, perhaps on a part-time basis, to deal with inquiries requiring only routine responses. The Special Agent in Charge would be the one responsible for responding to any inquiry regarding an ongoing case. Physical distribution of a press release, on the other hand, would be assigned to an agent with part-time press functions. The release itself might be drafted by such an agent, but no actual distribution of it would occur without personal approval by the Special Agent in Charge. Such a general restructuring could be implemented on an experimental basis in a sample of larger and smaller offices.

Even if the position of media representative is preserved, its present form and procedures may merit revision. Access of the media representative to sensitive material, for example, ought to be stringently restricted -- and publicly known to be so. In at least one office observed during this investigation, the public relations staff was directed to review routinely all incoming and outgoing teletypes. Such a practice creates obvious dangers of disclosure, whether purposeful or inadvertent. Narrowing the knowledge available to media representatives, however, may only dramatize the inherent difficulties of this job. The media representative often fields inquiries on behalf of the Special Agent in Charge on matters where nothing can be said publicly. If he truthfully knows nothing, he can do this job well, but eventually he will be ignored by many reporters, as they seek more cooperative sources. If he is knowledgeable, he risks the dangers of disclosure. The media representative's task, in this sense, may be truly untenable. If the position is retained, regardless of form, training for it should be improved, so that agents so assigned will be better prepared for the tremendous conflicting pressures that they must confront.

5. Revision of Statutes and Regulations

Existing statutes and regulations pertinent to unauthorized disclosures of confidential information suffer from vagueness and underbreadth. Imprecision afflicts the Privacy Act, for example, in ways that may preclude effective enforcement. The definition of a disclosure from a "system of records" should be further clarified so that there are no doubts about the Act's enforceability -- or its application, for example, to facts such as those present here. Similarly, the Department of Justice regulations that pertain to dissemination of information should be clarified and narrowed. Even where their substantive prohibitions are clear, and adherence to them would have prevented the leaks that occurred here, the remedies or sanctions may be difficult to apply effectively.

Consideration should be given to adopting new statutes or regulations that would offer additional prohibitions and sanctions -- covering, for example, the possibility of civil remedies against violators. Remedies should be available

not merely to the victims of unauthorized disclosures, but also to the government. Making civil remedies available to the government would seem especially appropriate with respect to violators who are no longer government employees, and who are immune from any administrative sanctions. The government is, in a real sense, a victim of leaks, particularly when they jeopardize prosecutions. Leaks discredit the entire law enforcement process, as well as undermine specific cases, and thereby damage legitimate governmental activities.

6. Restrictions on Former Employees

Regulations with respect to removal by government employees, at the time of their departure, of copies of documents containing investigative information should be made more specific, and penalties for violating them more stringent. One possible procedure would be to require individuals leaving governmental service to attest that no such documents are in their possession. An affidavit to this effect might be required, for example, as a condition of final financial compensation or retirement benefits. The danger of leaks would be reduced by stronger assurances that materials could not be copied and taken by retiring or resigning agents or attorneys. Civil remedies discussed above might be made applicable against former employees as well as present ones.

7. Informants

Dealing with government informants is an excruciatingly difficult and delicate task. Their motivations, backgrounds and modus operandi often make them resistant to control. Yet, at a certain point, the government may become legally and practically accountable for their actions.

Means must be devised to discourage and deter unauthorized disclosures and other misuse of confidential information by such individuals. One such measure was announced on December 12, 1980, as part of the Attorney General's Guidelines on FBI Use of Informants. The Guidelines require that, where practicable, compensation agreements with informants provide that compensation depend on compliance with the obligation of confidentiality for investigative information, and that any profits derived from a violation of the obligation will be forfeited to the United States. Guidelines, at ¶ M(3). Attention should be given to the possibility of developing other forms of deterrence, as well as measures to provide the government, so far as practicable, with knowledge concerning the full scope of informants' activities.

FINAL COMMENT

As discussed in the introduction to this document, the Department of Justice has been mindful of the conflicting, powerfully important interests which must be balanced in any "leak" investigation. On the one hand, there is the press' legitimate and important role in providing the public with information regarding the workings of its government. On the other hand, the government has a duty to protect all citizens, whether innocent or guilty in its eyes, from the type of unauthorized disclosures that prompted this investigation. This duty springs from the fundamental guarantees of the Sixth and Fifth Amendments -- the rights to a fair trial and due process -- as well as a practical sense of decency and fairness. These rights are no less sacred than First Amendment rights and deserve an equally generous reading. The Department has sought to conduct this investigation in a manner which would protect both interests, pursuing each

lead as exhaustively as possible while at the same time attempting to minimize any inhibition of press activities.

Despite the extraordinary effort made here, we have not ascertained the identities of all the leakers, nor perhaps, all the sources of any particular news story. Certain of the disclosures remain unsolved. Many of the news stories very probably came from more than a single source, resulting from separate contacts with numerous individuals, each of whom furnished a piece of the puzzle or confirmed part of the overall account. Nonetheless, the investigation has been successful in identifying the specific sources of some of the disclosures. Our hope is that these results may help deter future disclosures of sensitive investigative information by reinforcing to all Department employees the importance of their professional and governmental obligations to keep such information confidential, and by demonstrating that the breach of these duties will not be tolerated.

Political Appointments

How many of the top positions of the Department of Justice have not been filled?

In addition to the positions of Attorney General, the Deputy Attorney General, and the Associate Attorney General, the President appoints 20 heads and deputy heads of bureaus, offices, and divisions, the Chairman and eight members of the U.S. Parole Commission, the Chairman and two members of the Foreign Claims Settlement Commission, 94 U.S. Attorneys and 94 U.S. Marshals. Although all 223 positions serve at the pleasure of the President, specific terms are specified in law for the Director of the Federal Bureau of Investigation, the U.S. Attorneys, the U.S. Marshals, the members of the Parole Commission and the Foreign Claims Settlement Commission.

As of April 17, 1981, the Attorney General, the Deputy Attorney General and four other persons had been confirmed by the Senate. The Associate Attorney General has been nominated.

The President has announced his intention to retain William H. Webster as Director of the Federal Bureau of Investigation. No final decision has yet been made on the retention of other Presidential appointees from the previous Administration. However, in accordance with previous practice a large number of U.S. Attorneys will probably be retained through the end of their terms. A number of Marshals may also be retained for an indefinite period.

The following list of headquarters positions shows those positions that have been filled and lists positions where nominations have been or may be submitted.

POSITION AND FUNDING SOURCE	NAME	STATUS
General Administration		
Attorney General	William French Smith	Confirmed
Deputy Attorney General	Edward C. Schmults	Confirmed
Associate Attorney General	Rudolph W. Giuliani	Nominated
Solicitor General		
Assistant Attorney General Office of Legal Counsel	Theodore B. Olson	Confirmed
Assistant Attorney General Office of Legislative Affairs		
Assistant Attorney General Office for Improvements in the Administration of Justice		
Assistant Attorney General Antitrust Division	William F. Baxter	Confirmed

POSITION AND FUNDING SOURCE	NAME	STATUS
Assistant Attorney General Civil Division		
Assistant Attorney General Civil Rights Division		
Assistant Attorney General Criminal Division	D. Lowell Jensen	Confirmed
Assistant Attorney General Land and Natural Resources Division	Carol E. Dinkins	Confirmed
Assistant Attorney General Tax Division		
Assistant Attorney General Executive Office for U.S. Attorneys		
Director, Community Relations Service		
Commissioner, Immigration and Naturalization Service		
Director, Office of Justice Assistance, Research and Statistics		
Administrator, Law Enforcement Assistance Administration		
Director, Bureau of Justice Statistics		
Director, National Institute of Justice		
Associate Administrator Office of Juvenile Justice and Delinquency Prevention		
Administrator, Drug Enforcement Administration		
Deputy Administrator, Drug Enforcement Administration		

INS Commissioner

The Commissioner of Immigration position has been vacant since September 1979. In the meantime, David Crosland has been doing an outstanding job in extraordinary circumstances. The Carter Administration fiddled around and finally selected someone else for Commis-

sioner who was never confirmed. What are your plans for filling this important position?

With my strong backing, filling of the position is being actively pursued by the White House. Excellent candidates have been identified and are currently under consideration.

Select Commission on Immigration & Naturalization Policy

Last week the Select Commission on Immigration and Naturalization Policy briefed the Subcommittee on their recommendations in their recent report. A key recommendation for this Subcommittee was that the Border Patrol be given substantial increases in the numbers and training of personnel and equipment. President Reagan's revisions do not change the Carter 1982 request for the Border Patrol, namely, that the positions assigned to the border be reduced by 160. (President Carter didn't have the benefit of the Commission's report but it was available to President Reagan.) Was the Commission's report considered before the Reagan Administration decided to endorse a lower commitment on the Border? Does the Reagan Administration have a plan to deal with the illegal alien situation, for instance, the 1,514 Cuban criminals that the American taxpayer is giving room and board at the Atlanta Penitentiary?

The recommendations of the Select Commission on Immigration and Refugee Policy were not considered in the development of INS' FY 1982 budget for the Border Patrol. Although President Reagan's budget does not change the FY 1982 request for the Border Patrol, we are not endorsing a lower commitment on the border than is currently in effect. The 160 positions added to the Border Patrol program by the Congress in FY 1981 are not now filled, and the funds associated with these positions will be used to absorb increased pay costs in FY 1981. However, there are still sufficient vacancies in the Border Patrol so that the actual employment level can increase by about 100 people over the current on-board level.

As you know, the Administration is developing its policies on immigration in general, and certainly our policy on illegal immigration will be an essential aspect of our proposals. Toward this end, the President has established a special Interagency Task Force which will report its recommendations to him by May 4, 1981.

Vehicle Policy

The American automobile industry has just reported horrible results for 1980. We have secured information that the FBI, INS, and DEA will have a total of 1,521 vehicles meeting the GSA replacement standard in 1981 over and above the number budgeted. In DEA more than 1/4 of the fleet will be in excess of the GSA criteria. DEA replacements are budgeted even though 375 were authorized in the 1981 Appropriations Act. We find similar gaps in the FBI and INS.

What has happened to the money appropriated for the original number of vehicles proposed for purchase in 1981?

In view of the high priority on bringing our defense equipment up to snuff, shouldn't we also be maintaining the equipment of our law enforcement agencies?

Would it be a better policy for the Administration to purchase the vehicles that are apparently required from our beleagured automobile companies, instead of trying to protect them through devices like orderly marketing agreements?

Because the situation relative to motor vehicle replacement is different in the case of the FBI, DEA, and INS, Department staff have provided the following explanation of each organization's motor vehicle replacement plans for FY 1981 and FY 1982.

Allocation of Funding for Vehicle Purchases

In the original (January 1980) FY 1981 budget estimates for the FBI, funding was requested to purchase 1,100 replacement motor vechicles. Subsequently, however, when the FY 1981 budget was revised in March 1980, the FBI appropriation was reduced by $7,251,000. The FBI chose to apply a portion of this reduction, or a total of $2,200,000 to motor vehicle replacement. Consequently, the FBI's FY 1981 appropriation included funding for approximately 800 vehicles; however, as a result of inflation, the FBI estimates that it will in all likelihood be unable to purchase that many vehicles. At present, the FBI has accepted delivery on 33 surveillance vans in this fiscal year, and an order for 484 vehicles is being processed for forwarding to GSA. It is anticipated that additional vehicles will be ordered later this year.

The FY 1982 budget estimates include a request for authorization to purchase 1,500 motor vehicles. This increased number will be necessary to accommodate the greater number of vehicles which will meet or exceed GSA replacement criteria in FY 1982 as a result of the reductions in the current fiscal year.

The current inability of DEA to procure a significant number of replacement vehicles in FY 1981 is the result of an explicit policy decision made by the Administrator of DEA in 1978. During the Department's FY 1980 budget formulation process, the Department's Budget Review Committee approved program reductions for DEA in excess of $6 million; the Department afforded the Administrator the opportunity to select the manner in which the reductions would be applied. One of the alternative reductions selected by the Administrator was a one-year deferral of the purchase of motor vehicles, i.e., a deferral for all of FY 1980. In FY 1980, DEA was able to replace some of its motor vehicle fleet through acquisition of seized vehicles. At the time, it was understood that DEA was to identify program reductions in FY 1981 to restore the vehicle replacement funding of $1.8 million.

During the FY 1981 budget formulation process, DEA requested a program enhancement in excess of $3 million to replace vehicles. The Administrator did not identify offsetting program reductions in order to restore the vehicle replacement base. The Department approved a request on DEA's behalf to OMB for an enhancement of $1 million based upon an expectation that the Adminstrator would identify an additional $1,800,000 in program reductions to restore the vehicle replacement base funding. The $1 million enhancement request for vehicles was denied by OMB. Further, the Administrator has not elected

to restore the vehicle replacement funding base. As a result, DEA will be able to procure, in FY 1981, only those vehicles which can be funded through reapplication of the proceeds from the sale of older used vehicles. At the present time, this is expected to be in excess of 70 vehicles. In addition, DEA will be able to replace another 150 vehicles through acquisition of forfeited seized vehicles. DEA also intends to reduce its base motor vehicle fleet by 354 vehicles in 1981 for which no replacements are planned.

The 1982 request includes funding of $1,400,000 to begin again a motor vehicle replacement program in DEA. DEA plans to procure 277 replacement vehicles and replace another 150 vehicles through acquisition of forfeited seized vehicles.

Over the past few years, INS' vehicle base funding has been eroded because the Service needed the dollars for other, higher priority items. However, this process was reversed in FY 1980 when INS reprogrammed $4,761,000 (for a total availability of $10,734,000) and purchased 1,042 vehicles. Because many of I&NS' vehicles achieve high mileage very quickly and the agency operates on a four year replacement schedule, vehicles tend to qualify for replacement under GSA mileage replacement criteria more quickly than in most other agencies.

INS has $2,359,000 available in its FY 1981 budget base which will allow the Service to replace 232 of about 740 vehicles justified under GSA replacement criteria.

In past years, INS has been unable to maintain a vehicle funding base, determine exactly the number and type of vehicles on hand and establish a suitable vehicle fleet configuration. During the Department's review of INS' FY 1982 program budget request, the issue of vehicle fleet composition and control was raised. As a result, INS was requested to develop a comprehensive Motor Vehicle Program. The draft plan for this program is now complete and under review by the Department. Its implementation will provide the Service with a sound basis for vehicle fleet requests and fleet control.

Policy on Equipment Maintenance

I agree that law enforcement equipment should be maintained in good working order both for the protection of the people using the equipment and for the success of the activities for which the equipment is used. In terms of fiscal constraint, it is possible to defer major equipment replacement by stretching out the useful life cycle of equipment. In addition, the Department during the past year has directed organization heads to limit to essential cases only, the policy of allowing field investigative personnel to use official government cars for travel between work and home. Restricting the use of vehicles between home and work reduces the mileage put on government vehicles and thus the average vehicle reaches the 60,000 mile replacement guideline at a slower rate.

Policy on Purchase of Vehicles to Assist Automobile Companies

I cannot address the Administration's policy on orderly marketing agreements. However, I do not believe the Department's motor vehicle purchases--even if doubled in 1982--would have a significant impact on the American automobile industry.

U.S. Marshals Service Organization

The U.S. Marshals Service appears to be in need of organization. We have created additional judgeships without concomitant increases for the Marshals so that the courts are constantly complaining about security, at the same time the FBI has turned over to them the apprehension of fugitives. At the same time the Marshals have struck out on their own. I recently learned they taught courses in scuba diving and aircraft tactical deployment to the Knoxville Police Department in preparation for the 1982 World's Fair.

What is your overall impression of the Marshals Service?

I am very impressed with the number of vital functions the Marshals Service performs in support of the federal justice system—especially the provision of judicial security, movement of federal prisoners, protection provided key government witnesses, execution of federal warrants and execution of government process.

From an organization perspective, the Marshals Service is quite different from other large Department agencies. The Director of the Marshals Service must work with some 94 appointees located in the Marshals Service's field structure. The individual U.S. Marshals, of course, often take direction from two sources—the Director of the Marshals Service and the Chief Judge of the respective federal district court. This structure is unique compared to, for example, the direct command relationship existing between the Director of the Federal Bureau of Investigation and his career field Special Agents-In-Charge. I am aware that the Marshals Service has taken steps in the past year to strengthen its headquarters operation and the support that the headquarters operation can provide to the Service's field offices.

As Attorney General, I have conducted a series of management meetings with each Department organization head, including the Director of the Marshals Service. As a result of those sessions, I am aware of the problems facing the Marshals Service. I am especially aware of the current problems with the judiciary regarding the service of private process and the proposal to limit Deputy U.S. Marshals' attendance at non-dangerous civil trials. As stated in my formal testimony, I plan to meet with the Chief Justice and seek his aid in coming to a workable solution of these two issues.

Given the funding and staffing constraints facing the Department and the Marshals Service, I believe we must recognize that a service and support agency like the Marshals Service may not be able to satisfy the perceived needs of all the groups it has traditionally serviced or supported.

The higher priority programs of the Marshals Service are continuing to be supported and, in fact, are receiving enhanced resource levels in 1982. Conversely, lower priority programs which involve lower risks or which involve activities which can be performed by the private sector are being deemphasized.

Juvenile Justice Funding

Over the last five years this Subcommittee has supported the Juvenile Justice and Delinquency Prevention Program. At first the Department opposed these efforts but the Carter budget included $135,000,000 for juvenile justice. While we were supportive there were always some misgivings that juvenile justice was more of a slogan than a program.

President Reagan has withdrawn all of the juvenile justice funds except the administrative money to phase out the program.

What was the basis of this decision, particularly since the Carter Administration had requested an increase of $35,000,000 over the 1981 level?

Juvenile justice programs have achieved remarkable results in reducing the number of status offenders in institutions and the number of juvenile offenders confined with adults. Many other excellent improvements have been made to the juvenile justice systems throughout the country. The Administration believes that the program has gone a long way in achieving its objectives and has amply demonstrated that the goals of the authorizing legislation are attainable.

However, the Administration also believes that the burden of funding the various juvenile justice programs should be shifted to the state and local levels where responsibility lies for public safety. We know that many of the principle states have institutionalized programs begun with federal funds provided by this program. We believe that many more will follow suit because many of the programs have proven successful. We also believe that the objectives of this program should be met through block grant programs administered by the Department of Health and Human Services.

Monitoring of LEAA Funds

In 1981, the Department put together a package of $8,500,000 in reverting LEAA funds, plus allowing the states to use 15 percent of their outstanding LEAA grants to monitor the $800,000,000 in LEAA funds in the states. It is expected that a large portion will still be unspent by the states on September 30. How does the Department expect to monitor the use of those funds?

The Department of Justice did award $8.2 million of reverted block funds to those states which demonstrated a need for funds. The majority of these funds will be expended by the end of 1981. States were also authorized to reprogram $12 million for administrative purposes. The Department of Justice is currently conducting a survey of the demonstrated needs of the state Criminal Justice Commissions (CJC) to provide fiscal monitoring by the CJCs to ensure the integrity of the remainder of those block grant funds in FY 1982 which are outstanding. In order to provide fiscal integrity for the $800 million left in the pipeline, LEAA intends to authorize the reprogramming by the CJCs of action funds. There are also approximately $4 million in reverted block funds which the Department of Justice will award to the state CJCs to augment their reprogrammed funds. The approved reprogramming and award of the $4 million in reverted funds will be

closely reviewed by LEAA to ensure that only those functions essential to close out the program are funded.

OJARS Supplemental Request

The supplemental for OJARS' Research and Statistics has been substantially reduced. Will the funds now requested be adequate to continue the support of SEARCH?

SEARCH Group, Inc. (SGI) is a consortium of representatives of the Governors of all fifty states which has functioned over the last decade by providing LEAA with technical projects and studies related to the interstate exchange of criminal histories, the use of computer by state and local criminal justice agencies, security and privacy of records, development of offender-based information and statistics systems, and direct help in the implementation of management information systems in law enforcement and other criminal justice agencies.

Bureau of Justice Statistics (BJS) under its new statutory mandate has a diminished role in research and development of automated information systems. However, if the supplemental request is approved, BJS will support SEARCH at a reduced level as a national clearinghouse for providing technical and capacity building assistance to state and local justice systems, with particular emphasis on information systems that feed data directly to such national statistical series as the Uniform Crime Reports and the National Prisoner Statistics.

Funding for Atlanta Emergency

Last week the Department announced that an additional $1,500,000 was going to Atlanta for police overtime. Earlier in the month the Department made available $650,000 in Juvenile Justice funds as part of a $979,000 package to provide after-school guidance and care in the six Atlanta areas where most of the murders have occurred.

- *-- Since LEAA funds are no longer available, what is the source of the latest $1.5 million?*
- *-- What is the total federal presence in Atlanta working on the murders of the black children?*
- *-- What is the outlook for solving these murders?*

President Reagan announced that $1.5 million was going to Atlanta to help finance the investigation by local authorities into the murder of black children. The funds will be provided by the Department of Housing and Urban Development and the Federal Emergency Management Agency.

More than thirty agents of the FBI are active in the Atlanta investigation in addition to the use of FBI laboratory and other technical resources. The bulk of the "federal presence" is focused on providing assistance in crime prevention and community mental health services project development.

The primary jurisdiction over the investigation of the murders falls to the local criminal justice officials. Consequently, we are not in a position to judge the outlook for a solution to these crimes other than to help assure that all of the assistance available from the Federal Government is provided to the local officials.

Questions Submitted by Senator Cochran

State and Local Drug Grant Program

The multi-state law enforcement projects were funded, at the specific direction of Congress, under the General Administration line item in the Department's budget. In FY 1981 the funding level was $9.5 million. Now the Administration has submitted a deferral (D81-85) of $6,185,000 for this program, with a planned reprogramming to shift the funds to the Federal Bureau of Investigation. Why did the Department decide, in effect, to cut this program by two-thirds of the total appropriated?

The Department's evaluation of this program showed that a cut in funding of the various projects would not significantly reduce their effectiveness. None of the seven currently funded projects will be terminated in this fiscal year.

Are you aware that this cut will effectively put out of business four of the projects which are now short of funds and could not survive until Congress acts on the FY 1982 appropriation? Was that result intended by the deferral message?

No projects currently funded will run out of funds prior to FY 1982. The seven projects currently funded and their termination dates, unless new funds are made available in FY 1982, are:

Rocky Mountain Information Network	December 31, 1981
Western States Information Network	December 31, 1981
Regional Organized Crime Information Center	October 31, 1981
Mid-Atlantic Great Lakes Organized Crime Law Enforcement Network	December 31, 1981
New England State Police Administrators' Conference	December 31, 1981
LEVITICUS	December 31, 1981
Mid-States Organized Crime Information Center	April 14, 1982

Has the Department evaluated the law enforcement effectiveness of the multi-state projects? If so, what have been the findings of that evaluation?

A grant to the Institute for Intergovernmental Research allows for the evaluation of the Regional Intelligence Program, to be completed by January 30, 1982. Tentative assessment indicates that those projects which have been fully operational (RMIN, ROCIC, LEVITICUS) are having a recognized impact upon detection and removal of organized criminal elements. A recently released GAO report titled "The Multi-State Regional Intelligence Projects - Who Will Oversee These Federally Funded Networks" provides an excellent overview of the program.

I believe that the multi-state law enforcement projects were created to fill a void in law enforcement efforts. They assist local law enforcement officials to communicate with each other and exchange information on travelling criminals who commit serious crimes. I understand that these matters are not of the type that normally attract the attention of the FBI, but that without the assistance of the multi-state projects, local law enforcement officials lack the resources to pursue these cases beyond their jurisdictional lines. Do you agree with my assessment, or do you see the projects as duplicating either Federal or local efforts?

LEAA agrees with the statements concerning the need and propriety of state and local enforcement efforts. There is no duplication of existing Federal or state/local efforts.

General Administration

STATEMENT OF KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION

ACCOMPANIED BY:
CHARLES R. NEILL, CONTROLLER
WADE B. HOUK, DIRECTOR, BUDGET STAFF

BUDGET REQUEST

Senator Weicker. Our next request is that of the general administration appropriation. The amount requested is $37,653,000, a decrease of $1,921,000 from the 1982 base. The changes include decreases for the State and local drug grants program, the Federal justice research program, and executive direction of the department.

Appearing on behalf of this request is Kevin D. Rooney, Assistant Attorney General for Administration, who is accompanied by Charles R. Neill, Controller, and Wade B. Houk, Director of the Budget Staff.

Mr. Rooney, we will be pleased to hear your statement with regard to this request.

Mr. Rooney. Thank you, Mr. Chairman.

Senator Weicker. Administrations come and administrations go, but you seem to be here. [Laughter.]

Mr. Rooney. Yes; that is true.

Senator Weicker. Anyway, nice to have you here. Why don't you go ahead and make your statement. It is not that long, so why don't you just go ahead with it.

Mr. Rooney. Thank you, Mr. Chairman.

OPENING STATEMENT

I am pleased to be here to testify in support of the general administration budget request for fiscal year 1982. The total request provides for 723 positions and $37,653,000, a net increase of 28 positions and $2,895,000 over the 1981 anticipated appropriation. Increases in the budget are the result of uncontrollable increases of $1,825,000, increases of 70 positions and $3,466,000 for the transfer of the Office of Justice Assistance, Research and Statistics audit function to the Justice Management Division and nonpersonnel increases of $2,208,000 principally for communications and data processing requirements. The increases are offset by program decreases of 42 positions and $4,129,000 and a $475,000 transfer to the Criminal Division for the INTERPOL office.

The program reductions are part of the Department's overall efforts to reduce its budget in support of the President's program for economic recovery. These reductions are slated principally for the Department's overhead and executive oversight operations, the Federal justice research program, and the State and local drug grant program which was

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funded at $3,170,000 in 1981. Finally, nonpersonnel program increases are requested to meet requirements to support several key operations within the Justice Management Division.

Of these requirements totaling $2,208,000, $783,000 is needed to provide special secure telephone devices for communications with the U.S. intelligence community and to establish training capability for paralegal and Senior Executive Service employees.

An increase of $137,000 will allow further development of the financial management information system to include all of the offices, boards, and divisions now serviced by the legal activities and general administration accounting system.

Finally, $1,288,000 is required for litigation and management information systems, principally to provide in the library adequate utilization of information banks and automated data systems for both legal and factual research. This will directly affect the development of automated library services, bringing this valuable resource in line with current state of the art technology.

This concludes my statement, Mr. Chairman. I will be happy to answer any questions you may have.

NEW LEGISLATION

Senator WEICKER. What specific savings in the Department's request for fiscal years 1981 and 1982 are contingent upon the enactment of legislation?

Mr. ROONEY. The entire Department's request?

Senator WEICKER. Yes.

Mr. ROONEY. We have several areas. One is the transfer to the District of Columbia, which the Attorney General referenced this morning, with regard to the U.S. attorneys and U.S. marshals. This particular proposal is under review, however, by the Attorney General at this time.

Additionally, the elimination of the U.S. trustees program will also require legislation. The current law states that the trustees and their assistants can only be removed for cause. This particular issue would have to be addressed.

The third area is legislation to remove the marshals from the requirement of the service of private process. That proposal will again be reviewed as part of the authorization for 1982. This was reduced in the last Congress but not passed. However, Congress did reduce the resources we voted for that program.

The fourth area will be legislation to support our proposal to reduce the cost of overtime in the Immigration Service. Under the 1931 act, overtime was a significant cost, which we are proposing to replace with the lower standard of the 1945 act on overtime.

Those essentially are the four areas that require legislation.

PERSONNEL REDUCTIONS

Senator WEICKER. Substantial position reductions are proposed for fiscal years 1981 and 1982. What portion of these reductions will the Department be able to absorb through attrition?

Mr. ROONEY. You are speaking across the Department?

Senator WEICKER. 2,181 positions.

Mr. ROONEY. We are anticipating that, with the exception of the U.S. Marshals Service, the trustees program and LEAA, all of them can be accomplished through attrition. And most of the reductions in those areas that I identified would also be accomplished by attrition.

Senator WEICKER. What impact will the proposed 239 position reduction in general legal activities have on the priorities of the Department's legal division?

Mr. ROONEY. It should have a minimal impact, Mr. Chairman, because the 1982 level that is anticipated is basically equal to the current on-board strength. In fact, there are less than 30 positions over that level today.

Senator WEICKER. Is any reorganization of the Department's legal divisions contemplated?

Mr. ROONEY. Not at this time.

FEDERAL JUSTICE RESEARCH

Senator WEICKER. What is the amount being requested this year for the Federal justice research program?

Mr. ROONEY. The Federal justice research program request is for $1,306,000.

Senator WEICKER. Do you have a list of the planned projects for 1982 and the estimated amount of each?

Mr. ROONEY. We do have a list, Mr. Chairman, of the planned projects as they currently are now. However, that office is being restructured, and when the new Assistant Attorney General is brought on board, it would be modified, I expect. We will provide that.

[The information follows:]

Federal justice research—planned projects—1982

Project	*Amount*
White collar crime prosecution strategies.—To develop white collar crime prosecution strategies based upon the results of a survey project on white collar crime	$156,000
Fines and judgments.—To improve procedures for collecting criminal fines and civil judgments by U.S. attorneys. The Attorney General has cited this in his "Policy and Program Guidelines" as one area for improvement in 1982	200,000
Resource allocation for investigations.—To develop a method of resource allocation for investigative activities in light of Department guidelines	250,000
Civil alternatives.—To design and test the alternative procedures for handling civil cases in Federal courts suggested by the cost of civil litigation research project	200,000
Costs of crime.—Continuation of a project from 1981 to develop a means to assess the relative total costs of criminal activity in this country, yielding data to better allocate law enforcement resources	100,000
Role of courts research.—To conduct research in response to the recommendations of the Council on the Role of Courts	100,000
Federal appellate cases.—To improve procedures for processing Federal appellate cases	100,000
Exclusionary rule improvements.—To develop improvements in exclusionary rule procedures to preclude the exclusion of evidence for very minor administrative errors	100,000
Rules of criminal procedure.—An initial project in a long-term effort to produce a rewritten and integrated code of criminal procedure	100,000
Total 1982 budget request	1,306,000

In addition to the above planned projects, the Federal justice research program currently is developing projects to improve strategies for terrorism control, to improve the capability of courts to accept and use scientific information, and to develop promising research ideas through an abbreviated program of smaller awards. These projects would be considered for funding in 1982 if some of the listed projects could be done for less money or if the research plan needed modification.

Senator WEICKER. Wasn't that a little slush fund coming out the Attorney General's office?

What can't be done by the National Institute of Justice that is done by this program?

Mr. ROONEY. The principal difference here is that this is Federal research. The National Institute of Justice is targeted more at the State and local government.

Senator WEICKER. I would like to have a list of the projects funded within the last year and the costs.

Mr. ROONEY. We will provide that, Mr. Chairman.

[The information follows:]

FJRP Contracts for Research Using FY 1980 Appropriated Funds

Project	Contractor	Amount of Contract	Description
Case-Weighting Variations	INSLAW	$389,477	A study of resource allocation in U.S. Attorneys' offices, which builds upon an earlier case-weighting project to implement a workable resource allocation scheme.
Speedy Trial (Completed)	Abt Associates	$351,730	A study, mandated by the Speedy Trial Amendments Act of 1979, to estimate the impact of the Act on civil backlog, determine the level of compliance among 1500 cases in 18 sample districts and describe efforts to increase levels of compliance.
I&NS Management Study (Completed)	Reimbursement Agreement with OPM	$ 88,000	A study of management procedures at the Immigration & Naturalization Service as mandated by Congress in the DOJ authorization bill. Conducted under auspices of President's Management Improvement Council.
Law & Society Review Issue	U. of Wisconsin	$ 9,988	Assembly and publication of a special issue of the Law & Society Review devoted to the subject of civil justice research.
I&NS Statistics Conference (Completed)	Interagency Agreement with Commerce Dept	$ 15,000	Conduct of a conference on I&NS statistics to determine whether a major project in this area would be desirable.
Role of the Attorney General (Completed)	U. of Virginia	$ 12,950	A study of the role of the Attorney General with respect to the tension encountered in seeking to enforce the law even-handedly while providing legal advice to the President.

Project	Contractor	Amount of Contract	Description
Interpersonal Meditation	U. of Southern California	$ 8,676	Research in mediation techniques, with special reference to those characteristics that determine the degree to which interpersonal mediation is successful.
Williamsburg Conference (Completed)	Brookings Institution	$ 8,000	Conduct of "Third Seminar on the Administration of Justice," bringing together members of the three branches of government to explore common problems in the administration of justice.
Back-Up Role of Courts (Completed)	Prof. Martin Shapiro	$ 3,000	An essay on how the courts might be cast in a back-up role to instill public confidence in a dispute resolution system where courts are the initial deciders.
Extended Impact Survey (Completed)	Amherst College	$ 3,000	A census of the extended impact cases in which federal courts have taken over the operation of state prisons and mental institutions.
Court Functions (Completed)	Prof. Murray Schwartz	$ 3,000	An essay on judicial functions other than the decision of contested cases.
Judicial Adjuncts (Completed)	Prof. Joanna Weinberg	$ 1,000	An essay on when and why judicial adjuncts are employed by trial courts and approved by appellate courts.
Role of Courts of Limited Jurisdiction (Completed)	Prof. Susan Silbey	$ 3,360	An essay on the structure and capabilities of limited jurisdiction courts, assessing the extent to which they discharge functions that would otherwise fall to general jurisdiction trial courts.

Project	Contractor	Amount of Contract	Description
Costs of Civil Litigation	U. of Wisconsin-Madison	$ 588,540 (Added in FY 80)	Incremental funding and additional work under contract begun in a prior year.
Sentencing	INSLAW	$ 132,108 (Added in FY 80)	Additional work and rate adjustment under contract begun in a prior year.
Justice Impact (Completed)	Mathtech	$ 97,138 (Added in FY 80)	Completion of contract begun in a prior year.

FJRP CONTRACTS PLANNED FOR FY 1981 APPROPRIATED FUNDING

Note: All of the planned projects listed below are currently under review by the Attorney General

Project	Contractor	Amount of Contract	Description
White Collar Crime	To be selected by RFP	$ 500,000 (Planned)	A study of the impact and incidence of white collar crime in American society. The study will develop and use surveys of the general public, relevant occupational groups, legal publics, and known federal offenders to establish a base of information on white collar crime which will assist the development of federal enforcement policies and priorities. The study also seeks to learn the characteristics of organizations and governments that may contribute to the occurrence of white collar crime.
Medical Malpractice	U. of Pennsylvania (Not yet awarded)	$326,000 (Planned)	A project to study the experience of a number of states which are experimenting with the use of screening panels to process medical malpractice claims. The purpose is to determine whether the panels are effective and to identify the particular panel characteristics associated with effectiveness.
Jury Selection Procedures	To be selected by RFP	$150,000 (Planned)	During the past year a number of challenges have been brought to jury empaneling procedures in federal districts. In cooperation with the Executive Office for U.S. Attorneys, FJRP is developing a study to assess current procedures, identify needed changes, and establish a procedure for continued monitoring of jury selection.

Project	Contractor	Amount of Contract	Description
I&NS Statistics	To be selected by RFP	$ 100,000 (Planned)	In response to recommendations of the Select Commission on Immigration Law and Policy and the National Academy of Sciences Conference, a project is planned to improve Immigration and Naturalization Service statistical capabilities and utilization and to improve our ability to estimate the extent and impact of undocumented aliens.
Costs of Civil Litigation	U. of Wisconsin Madison	$ 190,000	Incremental funding and completion of project begun in a prior year.
COURTRAN/PROMIS	International Business Services, Inc. (Not yet awarded)	$ 50,000 (Planned)	A study of the major information systems currently in use in U.S. District Courts (COURTRAN) and U.S. Attorneys' Offices (PROMIS), to determine whether further interrelation of the systems would be beneficial.
Review of Civil Justice	The Rand Corp. (Not yet awarded)	$ 100,000 (Planned)	Production of a volume of twelve essays by noted researchers and writers on priority topics in civil justice research. The project is intended to focus current efforts in civil justice research to make them more policy-relevant.
Heavy Discovery Cases	U. of Wisconsin-Madison (Not yet awarded)	$ 15,000 (Planned)	A research project to develop a method of predicting the incidence of heavy discovery cases in federal district courts so that such cases may be better managed and associated delay kept to a minimum.
Costs of Crime	To be selected by RFP	$ 100,000 (Planned)	A project intended to develop a means to assess the relative total costs of criminal activity in this country and to allow better allocation of law enforcement resources. A small conference was recently held to determine the feasibility and desirability of such a project.

Project	Contractor	Amount of Contract	Description
Williamsburg Conference IV (Completed)	Brookings Institution	$ 9,500	The organization and conducting of the "Seminar on the Administration of Justice", March 6-8, 1981. It brought together members of the three branches of government to explore common problems in the administration of justice.
Federal Influence Upon State Supreme Courts	National Center for State Courts	$ 9,986	A research project to test the hypothesis that state supreme courts are deciding an increasingly larger proportion of cases based upon federal law or federally-inspired state laws.

STATE AND LOCAL DRUG GRANTS

Senator WEICKER. The Department is proposing to rescind $6.3 million of the $9.5 million provided for the multistate drug enforcement programs. What are the reasons for this rescission and what will be the effect of this action?

Mr. ROONEY. The rescission is part of the President's economic recovery program. The President cut back on funds which are as the Attorney General referenced this morning, subsidies to State and local criminal justice areas.

Senator WEICKER. Is that what this is?

Mr. ROONEY. That is precisely what this is. In most instances, it is strictly a grant program to regional intelligence networks for organized crime and drug trafficking. There are currently five projects throughout the country that are scheduled for funding under this program. In allocating the reduction in funding from $9.5 million to $3.17 million, we have made every effort to budget each project at a level to insure that it may be maintained at ongoing levels.

PROFESSIONAL RESPONSIBILITY INVESTIGATION

Senator WEICKER. Can you tell us how many investigations were referred to the Office of Professional Responsibility in the last year and how many cases were closed without action and how many resulted in actions being taken?

Mr. ROONEY. I don't have that information with me.

Senator WEICKER. Will you submit that for the record?

Mr. ROONEY. I will.

[The information follows:]

PROFESSIONAL RESPONSIBILITY WORKLOAD DATA

In 1980, the Office of Professional Responsibility received, reviewed, and acted on 452 allegations of misconduct against Department of Justice officials. Of the allegations acted upon, 89 percent were closed without disciplinary action and 11 percent were closed with action. The category breakdown of the 452 matters is as follows.

A total of 235 matters (52 percent) could be categorized as allegations involving various criminal allegations such as fraud against the Government, obstruction of justice, bribery, conflict of interest, misuse of official position, political activity, and larceny.

A total of 114 matters (25 percent) pertained to abuse of prosecutorial or investigative authority or mistreatment by prison officials.

A total of 58 matters (13 percent) pertained to the unauthorized release of official information or "news leaks" about ongoing Department investigations.

A total of 45 matters (10 percent) were classified as miscellaneous and pertained to prohibited personnel practices, inactions on various complaints, and complaints of human and civil rights violations.

CASE MANAGEMENT STUDY

Senator WEICKER. In your 1981 adjustments, I notice that the Department is deferring the $300,000 case management study. I would assume that such a study would lead to long-term economies and savings from better case management.

In fact, in a February 12, 1981 communication to the committee, the Department indicated that "all the funds identified in the Senate Appropriations Committee report have been set aside for the intended

purposes and work is underway to develop the case management system."

For what purpose is this $300,000 being deferred?

Mr. ROONEY. The $300,000 is being deferred for primarily two reasons. One is that in the tight budget situation, this money for a study could be more effectively utilized for operations. Within our litigating divisions and in the U.S. attorneys' offices there are considerable moneys, based upon internal studies other than this one mandated by the Judiciary Committee, for improved case management. We are in fact asking in the general legal activities appropriation for a $1.2 million increase for litigations support and automated case filing systems.

DEPARTMENT LEADERSHIP

Senator WEICKER. There is a proposed reduction of 24 positions and $515,000 in "Department leadership" activities. What specific activities are affected by this proposal?

Mr. ROONEY. Affected by that proposal are the immediate office staffing levels of the Attorney General, Deputy Attorney General, and the Associate Attorney General. Some operational functions are being shifted to other places in the Department—INTERPOL to the Criminal Division and a couple of management activities to my division. But that will be absorbed within the budget.

Senator WEICKER. Are the two chefs and the four food service workers in the Attorney General's dining room to be retained?

Mr. ROONEY. The people who are working in the Attorney General's office will be retained. There is one chef and three people in the kitchen who are carried as messengers.

Senator WEICKER. The information we have in response to a communication of a year ago——

Mr. ROONEY. One chef retired. [Laughter.]

DEPARTMENT AUDIT PROGRAM

Senator WEICKER. Your original 1982 base indicated a level of 91 positions and $4.7 million for internal audit activities of the justice management program. Has the revised budget affected this program? And does this reflect transfers from LEAA?

Mr. ROONEY. The revised budget does not affect that program. Seventy of those positions are indeed transfers from LEAA.

Senator WEICKER. How does the internal audit program relate to the Office of Professional Responsibility? Were all of the 41 audits conducted in 1981 self-initiated or were some requested by the Office of Professional Responsibility?

Mr. ROONEY. The office worked very closely with the Office of Professional Responsibility. There were several audits requested by the Office of Professional Responsibility, particularly in conjunction with ongoing investigations that that office had. As to whether they are included in the 41 or counted separately, I will provide that.

[The information follows:]

AUDIT WORKLOAD DATA

The workload data indicating 41 departmental audits relates to activity which occurred during 1980 rather than 1981. The majority of audit activity was self-initiated in accordance with the internal audit plan; however, two departmental audits were requested by the Office of Professional Responsibility.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. Other questions will be supplied for response in the record by Senators who are not here at the present time.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Hollings

Position Reductions

In view of the ABSCAM leaks, allegations against the INS by the Select Commission on Immigration and Naturalization Policy, and other such concerns, why is the Office of Professional Responsibility being reduced by three positions?

The Office of Professional Responsibility (OPR) was reduced by 3 positions in conjunction with the Administration's Economic Recovery Program. It should be noted that the proposed reduction is in line with OPR's current on-board strength of 8 positions.

What impact will the reduction of two positions for the Pardon Attorney have on the number of pardons?

It is estimated that the proposed staffing reduction would result in the presentation of at least 100 fewer pardon and commutation applications annually, enlarging the case backlog and lengthening processing time beyond two years.

NCIC System

Last year the Committee provided $1,000,000 to analyze the FBI's National Crime Information Center System. This followed years of negotiations between the Department and the Committee on the Judiciary. Does the Department have an alternative plan to study the NCIC system and the concerns that have surrounded it?

The $1,000,000 requested by the Department of Justice to study the FBI's NCIC was deleted from the FY 81 budget. Because of this deletion, the Department will consider an FY 83 budget from the FBI to address this problem.

To date, all analyses of NCIC have been issue oriented, concentrating on perceived existing problems. The focus has been on how well (or poorly) the system is performing as presently structured. Rather than concentrate on the present and place unwarranted restriction on the scope of NCIC and the technology used to support it, we advocate a new conceptual approach which would identify functions which the system should perform to meet the present and projected needs of the criminal justice community (and perhaps others) for an entire life cycle. If this fresh approach is not taken, we will continue to incur excessive ownership costs because of outdated, labor-intensive software, or we will expend considerable resources in reworking or rewriting existing software with the possibility of subsequently discovering that present and future user needs have not been met or that we have expended resources for a subsystem which is not needed.

To complete this analysis, the following functional aspects of NCIC would be identified:

- Determine the objectives of a National Criminal Justice Information system and identify the functions which satisfy these objectives. In the process, it would review and eval-

uate NCIC's current objectives, define new ones, and develop measures of effectiveness for these objectives.

- Review the present environment to determine what functions were being performed by NCIC and AIDS, document the workload and determine measures of effectiveness.

- Assess and project the national criminal justice environment for the life cycle of the system which would ensue. The study would identify environmental trends and logical constituents for a new system, and special considerations (e.g., specific needs of law enforcement - Federal, state and local - , corrections, judiciary, national security, private and semi-public groups). It would project future service requirements (volume, timeliness of response, etc.) from each of the user domains, future trends (e.g., economic, demcgraphic, legislative, regulatory, judicial decisions), and prospective constituencies.

- Evaluate the future technology environment to identify the most cost-effective hardware, software, design methodology, telecommunications medium, security and privacy protections, etc.

- Assess the interaction and impact of the projected criminal justice environment and future technology environment on the functions and objectives previously determined.

- Develop functional requirements sets and alternatives to meet these sets, then rank the alternatives in order of merit.

From this study, a new system design would be chosen and implemented with the assurance that future needs were not overlooked and that the conceptual integrity would remain intact throughout the life cycle. We used this methodology for the design of the organized crime information system where one of its strongrest features was the blending of practitioners (Special Agents with investigative experience and expertise in this area) with technological practioners to produce a symbiosis needed for the successful design or this complex computer-based information system.

Evaluation Studies

What studies does the Evaluation Staff have on its FY 1982 agenda, and how much will each cost?

Final decisions regarding the annual evaluation study agenda are not made until one month before the beginning of each fiscal year. Therefore, the Evaluation Staff has not yet developed an agenda for FY 1982, and will not do so until September 1981. To provide examples of the types of studies which are conducted, a list of the studies and costs, completed by the Evaluation Staff in FY 1980 and FY 1981, as follows:

Feasibility Study for the Transfer of the Litigation Functionos of the U.S. Railway Association (USRA) to Another Federal Agency: to determine the feasibility of transferring USRA's litiga-

tion functions to the Department of Justice. (Estimated cost: $24,725)

Feasibility of the Relocation of the Drug Enforcement Administration's (DEA) Training to the Federal Law Enforcement Training Center (FLETC): to study the feasibility and cost-effectiveness of consolidating all or part of DEA's Headquarters training programs with those of FLETC in Glynco, Georgia. A re-study of this subject was also completed which reexamined several of the original issues. (Estimated cost: $43,452)

Resource Assessment of the Security Programs Staff: to review the staffing and funding needs for the Security Programs Staff and to determine where the Occupational Health and Safety Programs should be located. (Estimated cost: $20,668)

U.S. Marshals Service Motor Vehicle Fleet Allocation Study: to identify the motor vehicle requirements for each Marshals Service district office. (Estimated cost: $20,841)

Study of Equal Employment Opportunity (EEO) Complaint Investigations: to identify the problems involved in procesing EEO complaints, including the cause of time lagis in EEO investigations. (Estimated cost: $10,057)

U.S. Attorneys' Case Weighting System: to project caseloads for fiscal year 1982 in an effort to integrate the case weighting system developed by the Institute for Law and Social Reserach into the Department's budget preparation process. (Estimated cost: $29,281)

Study of Consolidation of Immigration and Naturalization Service (INS) Lawyering Functions: to assist INS in designing a plan for the consolidation of INS lawyering functions and resources under the direction of the General Counsel. (Estimated cost: $24,114)

Staffing Analysts of the Executive Office of U.S. Trustees: to review the present organization and assignment of responsibilities and to develop a staffing pattern which allows for the effective and efficient assignment of duties among the staff. (Estimated cost: $19,395)

Evaluation of the Department of Justice Management of the Freedom of Information/Privacy Acts (FOI/PA) Processing Study: to examine the Department's FOI/PA administrative processes and identify needed improvements, and to study the role and responsibilities of the Administrative Counsel. (Estimated cost: $41,881)

Equal Employment Opportunity Complaint Invesigation - Phase II: to identify and make recommendations to eliminate the causes of extensive delay which occur during the adjudication/disposition phase of the equal employment opportunity complaint process. (Estimated cost: $27,181)

Evaluation of the Effectiveness of the Economic Crime Enforcement (ECE) Units: to determine the ability of the ECE Units to meet program goals, identify the areas where the program needs

improvement and assess the program's accomplishments. (Estimated cost: $39,397)

Evaluation of the Value of Federal Law Enforcement Training Programs to State and Local Authorities: to ascertain the value of State and local authorities of the training provided by the FBI, DEa and other departmental law enforcement agencies. (Estimated cost: $41,696)

There are no plans to have any studies conducted by outside contractors.

General Legal Activities

STATEMENT OF KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION

ACCOMPANIED BY:

JOHN F. MURRAY, ACTING ASSISTANT ATTORNEY GENERAL, TAX DIVISION
JOHN C. KEENEY, ACTING ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION
THOMAS S. MARTIN, ACTING ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION
ANTHONY C. LIOTTA, ACTING ASSISTANT ATTORNEY GENERAL, LAND AND NATURAL RESOURCES DIVISION
JAMES P. TURNER, ACTING ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION
CHARLES R. NEILL, CONTROLLER
WADE B. HOUK, BUDGET STAFF

INTRODUCTION OF ASSOCIATES

Senator Weicker. Now we are on to general legal activities.

The next request is that of the general legal activities appropriation. The amount is $127,136,000, an increase of $1,507,000 over the 1982 base, and provides for a decrease of 169 positions and increases for INTERPOL and litigative support.

Appearing on behalf of this request is Kevin D. Rooney, Assistant Attorney General for Administration, who is accompanied by Charles R. Neill, Controller and Wade B. Houk, Budget Staff. Mr. Rooney is also accompanied by John F. Murray from the Tax Division, John C. Keeney of the Criminal Division, Thomas S. Martin of the Civil Division, Anthony C. Liotta of the Land and Natural Resources Division, and James P. Turner of the Civil Rights Division.

PREPARED STATEMENT

Mr. Rooney, I am glad to hear your request for that amount. I don't know whether you want to synopsize that request. If so, please do. The statement in its entirety will be included in the record.

[The statement follows:]

STATEMENT OF KEVIN D. ROONEY

I am pleased to have the opportunity again to appear before you in support of the 1982 budget request for the General Legal Activities appropriation. The request of 2,759 positions and $127,136,000 represents a reduction of 169 positions and an increase of $6,170,000 over the anticipated 1981 appropriation of 2,928 positions and $120,966,000. The increase in funding includes $4,663,000 in the following adjustments to the base: a $475,000 transfer from the General Administration appropriation to the Criminal Division for the INTERPOL function; uncontrollable increases of $5,178,000; and non-recurring decreases of $990,000 for 1981 supplementals. In addition, there are program increases totaling $1,507,000, of which $1,187,000 is for litigation support systems for three of the legal divisions, and $320,000 is for INTERPOL.

I will briefly address the highlights of the requests for each of the organizations within the General Legal Activities. Representatives of those organizations are with me here today to respond to any specific questions you may have about their programs. I should also note that, unlike last year, the Antitrust Division's budget is not incorporated into the General Legal Activities appropriation; it is treated as a separate appropriation, and the Acting Assistant Attorney General for Antitrust will appear before the subcommittee in support of the Division's request. I do call your attention, however, to the fact that Attorney General Smith is proposing that the Antitrust Division appropriation be merged into the General Legal Activities appropriation to provide him more flexibility in managing the Department's litigation resources.

POSITION REDUCTION

Although the 1982 request represents a reduction of 169 positions in the General Legal Activities, its effect on the conduct of the Department's litigation will not be negative, primarily because the new position level approximately reflects the current on-board strength of the legal activities as a whole. Moreover, with the program increases for litigation support activities, the continued application of modern technology to the management of the Department's litigation will produce savings and efficiencies. Therefore, neither the quality nor quantity of our current litigation efforts should suffer, and the Department will continue to accomplish its national criminal law enforcement objectives and to effectively defend the government in the courts.

The specifi requests within the General Legal Activities appropriation are as follows,] . Chairman.

OFFICE OF THE SOLICITOR GENERAL

The Office o the Solicitor General is requesting 45 positions and $3,012,000, a reduction c two positions.

TAX DIVISION

The Ta Division is requesting 541 positions and $22,728,000 for 1982, a 33-positic ecrease. The decreases are being distributed among three of the Division' litigation programs and in administrative services.

CRIMINAL DIVISION

The Criminal Division is requesting 772 positions and $35,029,000, a reduction of 64 positions. The request includes a program increase of $320,000 for the International Criminal Police Organization (INTERPOL), a function which is proposed to be transferred from the General Administration appropriation to the Criminal Division in 1981. Of the $320,000 increase requested, $295,000 is for a case tracking system which is vital to the exchange of international criminal justice information, and $25,000 is for an expected increase in membership dues for INTERPOL in 1982. It should also be noted that the Criminal Division's amended budget reflects a transfer of $475,000 into the 1982 base, as well as a reallocation of six positions and an additional $264,000 of its own resources for the INTERPOL function. The 64-position decrease is being allocated among virtually all of the Division's programs.

CIVIL DIVISION

The 1982 request for the Civil Division is 640 positions and $28,913,000, a decrease of 20 positions. A program increase of $346,000 is requested for enhancement of the Civil Division's litigation support systems, specifically the acquisition of word-processing equipment to improve organizational productivity and to improve litigation management techniques. This increase would permit the rental of technologically current word processing machines to support the efficient preparation of voluminous legal documents and correspondence, and to eliminate needless duplication of effort and clerical overtime. The Civil Division has spread its 20-position reduction among the Commercial Litigation, Federal Programs and Executive Direction programs.

LAND AND NATURAL RESOURCES DIVISION

The Land and Natural Resources Division is requesting 336 positions and $ 17,659,000 for 1982, a decrease of two positions in the Land Acquisition Section. A program increase of $444,000 is requested to enhance the Division's litigation support activities by further development of its ADP data base. These additional resources will permit the long-range planning and systems development necessary to handle the large litigation support requirements of cases opened during 1980. The Land and Natural Resources Division's amended budget also reflects the elimination in the 1982 base of a previously proposed 1981 supplemental request for 47 positions and $2,712,000.

OFFICE OF LEGAL COUNSEL

The Office of Legal Counsel's 1982 request is for a total of 35 positions and $1,793,000, a reduction of two positions. No program increases are requested.

CIVIL RIGHTS DIVISION

The Civil Rights Division's budget request for FY 1982 totals 390 positions and $18,002,000, a net decrease of 46 positions and a program increase of $397,000. The increased funding is requested for litigation support, primarily to enable the Division to respond to an extraordinary number of voting redistricting and reapportionment proposals as a result of the 1980 census data. The increase will also be used in part to expand litigation support efforts in all of the Division's programs. The Civil Rights Division's amended 1982 budget reflects a reallocation of eleven positions from other programs to strengthen critical activities, specifically Special Litigation, the Voting Section, and the Coordination and Review Unit. Increases effected by the reallocation are offset by decreases of 57 positions in six other programs which the Civil Rights Division has determined to be adequately staffed at their current on-board levels.

This concludes my statement, Mr. Chairman. My colleagues and I shall be happy to answer any questions you or other members of the subcommittee may have.

BUDGET REQUEST

Mr. ROONEY. Thank you, Mr. Chairman. I will summarize it.

The request is for 2,759 positions and $127,136,000. This represents a reduction of 169 positions and an increase of $6,170,000 over the anticipated 1981 appropriation of 2,928 positions and $120,966,000.

Other than adjustments for uncontrollables and nonrecurring decreases resulting from 1981 supplementals, the budget request principally allows the general legal activities organizations, as I indicated earlier, to operate at their current on-board levels.

There is also requested a transfer from the general administration appropriation to the Criminal Division to support the INTERPOL function. We have increases in three of the litigating divisions to respond to the case management problems discussed earlier. These litigation support increases amount to approximately $1.2 million.

As you indicated, Mr. Chairman, I am joined today by the Acting Assistant Attorneys General from each of the litigating divisions that are included in this appropriation. They and I shall be happy to answer any questions that you may have.

PERSONNEL REDUCTIONS

Senator WEICKER. There are personnel reductions in general legal activities coming from various nonlitigative functions. What specific activities will be affected?

Mr. ROONEY. Most of the activities within the litigating divisions are litigative functions. I would hesitate to characterize them as nonlitigative functions. But the personnel reductions which are throughout the general legal activities appropriation, as I indicated, basically result in an overall staffing level for the divisions equal to the current on-board strength. This would mean some fluctuations. It would mean some reductions, particularly in the Tax, Land and Natural Resources, and Criminal Divisions, yet allowing some selected increases in the Civil Rights Division. There are some that remain at the current level.

SHIFT OF RESPONSIBILITY FOR CASE SUPERVISION

Senator WEICKER. In addition, the reductions reflect a policy to shift case supervision from Washington to the U.S. attorneys. What kind of cases are we talking about?

Mr. ROONEY. We are principally talking about those cases which do not require headquarters involvement. This would vary from division to division. But principally we are talking about cases where there is no need to develop a national litigation strategy or national policy and where it is possible to allow the U.S. attorneys from various district offices around the country to handle litigation directly.

DEFINING LOW-PRIORITY LITIGATION

Senator WEICKER. If you look at the U.S. attorneys' budget, you see position reductions associated with "staffing reductions in low priority U.S. attorney litigation." First, what is considered low priority? Second, at a time when we are reducing the number of cases supervised in Washington, will the U.S. attorneys be adequately staffed to assume the additional caseload?

Mr. ROONEY. When we say low priority we are really talking about a greater focus on high priority cases. However, the U.S. attorneys' offices should not, without an increasing caseload, have to defer any more cases than they do today. Even though there are authorized position reduction requests in the budget, the staffing level for the U.S. attorneys' offices today is approximately 40 to 50 people below what we have on-board at the end of fiscal year 1982. There was also a time period in the change of administration where there was considerable staffing reduction in the U.S. attorneys' offices. So we really do not anticipate much of an impact on those staffing levels.

COLLECTION OF FINES

Senator WEICKER. On page 33 of your original justification for fiscal year 1982 you state that during 1979, $3,612,353 was collected in criminal and civil fines and penalties. How much is still outstanding?

Mr. ROONEY. I have Mr. Murray with me, Mr. Chairman.

Mr. MURRAY. May we supplement the record with that information, Mr. Chairman.

Senator WEICKER. That will then be submitted for the record.

[The information follows:]

CIVIL AND CRIMINAL FINES AND PENALTIES OUTSTANDING

As of October 1, 1980, $70,785,432.28 in civil and $8,017,821.58 in criminal judgments, fines, and penalties was outstanding in cases pending in the Division's judgment and collection unit.

TRANSFER OF INTERPOL FUNCTION

Senator WEICKER. Why is the INTERPOL function being transferred to the Criminal Division from the Deputy Attorney General's office?

Mr. ROONEY. There are really two reasons. One is to remove direct operating functions from the Office of the Deputy Attorney General. The second reason is that under the Attorney General's reorganization of the Department, the Associate Attorney General, who will be working very closely with the Assistant Attorney General for the Criminal Division, will have direct oversight of all of the criminal enforcement activities of the Department, the Criminal Division and the law enforcement bureaus, with the exception of the FBI.

For this reason, to insure better coordination among not only the Justice agencies who participate—the Drug Enforcement, Immigration Service, et cetera—but also the other law enforcement agencies within the Government, particularly the Treasury, the INTERPOL function will be operating directly under the Associate Attorney General and the Assistant Attorney General for the Criminal Division.

Senator WEICKER. Were any positions transferred with the function, or will you need to hire six persons with specialized skills?

Mr. ROONEY. There will be six people transferred, but their costs will be assumed within the budget of the Criminal Division. There is no change in the overall 1981 budget of the Criminal Division.

U.S. ATTORNEY REDUCTIONS AND WORKLOAD

Senator WEICKER. Will planned reductions in the U.S. attorneys' offices affect the workload of the Division?

Mr. ROONEY. I will ask Mr. Keeney to respond generally to that. But let me preface it by saying that we don't expect any reduced staffing level in U.S. attorneys' offices with the reduction in positions. The staffing level will be greater than it is today because of the current freeze which has limited employment in U.S. attorneys' offices.

Mr. KEENEY. The higher the staffing level in the U.S. attorneys' offices, the less need there is for Criminal Division participation in the routine-type cases. I don't know whether that answers your question. It is hard to tell. We get involved with the U.S. attorneys in limited types of situations: The recusal situation, the situation where there are new policy areas, or a situation where the activities cover many different U.S. attorneys' offices. So it is pretty hard to answer that question specifically, Senator.

Senator WEICKER. Does the Division plan on delegating authority for specific types of cases to the U.S. attorneys in order to meet the goal of reduced supervision?

Mr. KEENEY. We do that repeatedly, Senator. We have a policy of retaining new statutes in the Criminal Division until we feel that the implementation policy has been adequately set. An example is that we are reviewing the foreign corrupt practices area because we feel that through the experience we have gained, U.S. attorneys can and should become more actively engaged, so there is less need for centralization. There is still a continuing need for our involvement, but it is lessening.

Senator WEICKER. What is the effect of the 20 position reduction in organized crime prosecution?

Mr. KEENEY. The overall effect on the Criminal Division of the budget cuts, Mr. Chairman, is rather limited. The net effect is going to be about 17 work-years for the overall Division, when we consider the funding level, although there is a total position cut of 64. When you take into consideration the funding that goes with the positions, our net loss will be about 17 work-years.

PUBLIC INTEGRITY EFFORTS

Senator WEICKER. The Public Integrity Section is being reduced from 56 to 35 positions. Do you intend to shift more public corruption cases to the U.S. attorneys?

Mr. KEENEY. We will shift public corruption cases to the U.S. attorneys. We encourage them to handle those cases, Mr. Chairman, except in those situations where there is something unique about it or the nature of the investigation and the individual involved make it inappropriate for the U.S. attorney to handle it or his office. Where we have a recusal situation, which we have on occasion, we encourage, if at all possible, if the U.S. attorney to recuse himself, and to assign an assistant who will report directly to the Public Integrity Section, but we don't have to in all circumstances. There are a few situations where it was necessary to recuse the whole office, but we discourage recusal in the U.S. attorneys' offices.

FOREIGN AGENTS

Senator WEICKER. The original justification submitted with the Carter budget noted that Cuban and Soviet agents may have come into the country last year in the Cuban flotilla. What is the Division's involvement in these investigations?

Mr. KEENEY. I am sorry, sir?

Senator WEICKER. The original justification submitted with the Carter budget noted that Cuban and Soviet agents may have come into the country last year in the Cuban flotilla. What is the Division's involvement in these investigations?

Mr. KEENEY. The Division is involved in the different investigations. I would like to, if I may, submit something on that particular question.

[The information follows:]

FOREIGN AGENTS—CUBAN FLOTILLA

The Federal Bureau of Investigation (FBI) has identified some Cuban agents among the persons arriving via the Cuban flotilla. The FBI has identified some suspected agents and anticipates identifying some additional agents. The FBI is continuing active investigations of these matters.

The Criminal Division has not received any referrals from the Bureau because no cases have been developed, as yet, to the stage where submission to us is appropriate. Upon the referral of any foreign counterintelligence matter, the Criminal Division's Internal Security Section provides legal advice on investigative matters and, if appropriate, may seek indictments for prosecution.

SUPERVISION OF U.S. ATTORNEY POLICIES

Senator WEICKER. There are 95 U.S. attorneys around the country. Each office is a mini-Justice Department, and the U.S. attorneys are an independent breed. What concerns me with proposals to reduce supervision is the potential for the establishment of different standards of justice and prosecutorial merit.

What does the Justice Department intend to do to insure that guidelines are consistently applied?

Do you intend to substantially revise the U.S. attorneys' manual?

Mr. ROONEY. When we talk about reduced supervision, I think we are really not talking, Mr. Chairman, about supervision of the U.S. attorneys' offices. What we are talking about is supervision over the cases that are assigned. In other words, where we are having someone in the divisions, particularly in the criminal and civil areas, we are spending some time doing these cases as well on a case-by-case basis. But it is not a reduction in supervision of the policies at all.

CIVIL RIGHTS REDUCTIONS

Senator WEICKER. The January budget proposed a 445 position level for the Civil Rights Division in fiscal year 1982. This budget calls for a level of 390—a 55 position cut. The largest reductions are from general litigation and Federal enforcement. In addition, staff increases in the voting and coordination functions are not as large as originally proposed.

I have several questions. Who is representing civil rights this morning?

Mr. ROONEY. Mr. Turner represents that division.

Senator WEICKER. First, will you be able to continue the same level of litigation and enforcement activity as envisioned by the original budget request in spite of these reductions?

Mr. TURNER. We will be able to have a viable civil rights program, but it won't be operating at the projected levels. However, with available staff resources and supporting appropriations, we will have a viable program. The litigation level will be substantial and significant. We have currently on-board 392 people. The allocation of 390 will enable us to continue as we are now with some improvements and reallocations to meet special needs.

VOTING RIGHTS ACT

Senator WEICKER. Second, with increased submissions relating to redistricting, will you be adequately staffed to conduct preclearance as required by the Voting Rights Act?

Mr. TURNER. We will be able, we project, to meet those needs in several ways. One is by getting some temporary personnel during times of heavy numbers of submissions, and we believe that the budget submission allows for that under the additional funding.

Senator WEICKER. Finally, with a backlog of 70 enforcement cases, what new enforcement actions do you estimate you will be able to bring?

Mr. TURNER. We will be able to bring some new actions, perhaps not as many as we had projected originally, but still a significant number, especially in civil rights prosecutions and the Federal enforcement area and the coordination and review of activities under the Executive order.

ANTIDISCRIMINATION EFFORTS FOR FEDERALLY-FUNDED PROGRAMS

Senator WEICKER. What resources are requested by the Division to carry out the Executive Order 12250 giving the Attorney General responsibility for coordinating the enforcement of antidiscrimination laws in programs receiving Federal financial assistance?

Mr. TURNER. We have increased the commitment in that area over our current level, Senator. We also project for 1982 a further increase of six permanent positions. Again we have programed some of the additional funding that we have projected under this budget to hire some part-time persons and to cover the start-up costs of the Executive order implementation. We have a work plan under that Executive order which I would be pleased to share with the committee.

[CLERK'S NOTE.—Subsequent to the hearings the following information was provided to the subcommittee:]

TO HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

Re: Draft Plan for the Implementation of Executive Order 12250, "Leadership and Coordination of Nondiscrimination Laws"

On November 2, 1980, the President signed Executive Order 12250 assigning to the Attorney General the responsibility for coordinating the enforcement of the following laws: (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); (2) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.); (3) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); and (4) any other statutory provision of Federal law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance (see Tab A). The Attorney General has delegated the authority and responsibilities under the Order to the Assistant Attorney General for Civil Rights.

Section 1-301 of the Order requires that, in consultation with the affected agencies, a plan for the implementation of the Order be prepared. Attached at Tab B is our draft implementation plan for your review and comment. The plan consists of the following: (1) Objectives for fiscal year 1981 for the Office of Coordination and Review (OCR) (at Tab B-1) */; (2) an organization chart of the OCR (at Tab B-2); (3) a description of the mission, functions, and specific responsibilities of the various components in the OCR (at Tab B-3);

*/ OCR is the component in the Civil Rights Division which will have the responsibility for implementing the Order. Note also that some tasks under each objective have not been scheduled for completion in FY'81, but will be undertaken in FY '82.

and (4) a list of action items, including due dates, to be expected from the affected agencies (at Tab B-4) */.

Please send in your comments by no later than December 12 to:

Ms. Stewart B. Oneglia, Director
Office of Coordination and Review
Civil Rights Division
Department of Justice
Room 408, Safeway Building
521 - 12th Street, N.W.
Washington, D.C. 20530

Telephone (202) 724-6757

We are sure that with your cooperation and assistance we will continue to make great strides in effectively implementing the various civil rights statutes covered by this Order.

Thank you.

Drew S. Days III
Assistant Attorney General
Civil Rights Division
Department of Justice

Attachments

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*/ Note that the list does not reflect all of the objectives and tasks listed at Tab B-1. The list only includes those action items to be taken in fiscal year 1981 which we believe will directly affect Federal departments and agencies or will require an action or actions on the part of those agencies or departments.

TAB A

Executive Order 12250 of November 2, 1980

Leadership and Coordination of Nondiscrimination Laws

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

1–1. *Delegation of Function.*

1–101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–2. *Coordination of Nondiscrimination Provisions.*

1–201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

1–202. In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions of laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.

1–203. The Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.

1–204. The Attorney General shall issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to the Department of Justice for enforcement where there is noncompliance.

1–205. The Attorney General shall establish and implement a schedule for the review of the agencies' regulations which implement the various nondiscrimination laws covered by this Order.

1–206. The Attorney General shall establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements by Executive agencies; for the sharing and exchange by agencies of compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; for the development of effective information programs; and for the development of cooperative programs with State and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance.

1–207. The Attorney General shall initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of the laws covered by this Order.

1–3. *Implementation by the Attorney General.*

1–301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1–302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1–303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations as he deems necessary, in consultation with affected agencies.

1–304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1–305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

1–4. *Agency Implementation.*

1–401. Each Executive agency shall cooperate with the Attorney General in the performance of the Attorney General's functions under this Order and shall, unless prohibited by law, furnish such reports and information as the Attorney General may request.

1–402. Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect.

1–403. Within 60 days after a date set by the Attorney General, Executive agencies shall submit to the Attorney General their plans for implementing their responsibilities under this Order.

1–5. *General Provisions.*

1–501. Executive Order No. 11764 is revoked. The present regulations of the Attorney General relating to the coordination of enforcement of Title VI of the Civil Rights Act of 1964 shall continue in effect until revoked or modified (28 CFR 42.401 to 42.415).

1–502. Executive Order No. 11914 is revoked. The present regulations of the Secretary of Health and Human Services relating to the coordination of the implementation of Section 504 of the Rehabilitation Act of 1973, as amended, shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General.

1–503. Nothing in this Order shall vest the Attorney General with the authority to coordinate the implementation and enforcement by Executive agencies of statutory provisions relating to equal employment.

1–504. Existing agency regulations implementing the nondiscrimination provisions of laws covered by this Order shall continue in effect until revoked or modified.

Jimmy Carter

THE WHITE HOUSE,
November 2, 1980.

TAB R-1

CIVIL RIGHTS DIVISION
OFFICE OF COORDINATION AND REVIEW
FY 1981 OBJECTIVES

Provide management, supervision, and general administrative overhead for the Office of Coordination and Review (OCR).

Functions

1. Training and development--training of staff to maintain or expand proficiency of technical management or other skills necessary for successful operation of the Office.

2. Committee membership--participation in Federal, state, and private sector committees, councils, task forces, and workshops.

3. Preparation of budget decision-packages, materials for Attorney General, Justice Management Division, Office of Management and Budget (OMB), etc.

4. Respond to critical issues and initiate ad hoc projects, as required, within the framework of the Office's mission (e.g., comment on legislative proposals; respond to congressional and White House mail; response to General Accounting Office studies, questionnaires or OMB policies).

5. Prepare annual report to President pursuant to §1-304 of Executive Order 12250.

6. Publish quarterly civil rights newsletter for distribution to Federal agencies, recipients, and public interest groups.

7. Prepare plan for implementation of Executive Order 12250, pursuant to §1-301.

8. Overall executive management and supervision.

Provide clerical and administrative support for the OCR.

Functions

1. Secretarial, stenographic, typing, and similar clerical services.

2. Other administrative services, including preparation of reports, handling management information systems, data entry and correction, library maintenance of coordination resource materials. Also includes preparation of graphics and visual aids for seminars, briefings, reports, docketing, filing, and reproduction.

Objective #1

Revise and promulgate comprehensive Department of Justice (DOJ) coordination regulations.

Tasks

1. Development of instrument to evaluate existing Attorney General coordination regulations; evaluation of existing Attorney General coordination regulations.

2. Preparation of revised draft regulations, including time limits for efforts to secure voluntary compliance, to initiate sanctions and for referral to DOJ for enforcement after findings of noncompliance (81-204).

3. Circulate draft regulations to disbursing agencies for consultation (81-301).

4. Publication of proposed regulations and request for comments.

5. Analysis of comments.

6. Publication of final regulations.

7. Revision of regulations as needed.

Objective #2

Coordinate development and issuance of agencies' regulations.

Tasks

1. Survey agencies to determine status of their regulations.

2. Compile and review existing agency regulations.

3. Schedule agencies for revision or draft of new regulations, as appropriate.

4. Contact agencies identified as requiring revisions in their existing regulations or as lacking new regulations.

5. Provide technical assistance to agencies in their efforts to revise or issue regulations.

6. Coordinate consultation of agency regulations with the Equal Employment Opportunity Commission (EEOC) and other affected agencies.

7. DOJ approval of regulations.

8. Review and revise agency regulations as needed by new statutes, changing case law, current policy-directives, new programs, or other such factors.

Objective #3

Develop and implement a system to review agency implementation plans (§1-403), including publication of guidelines for development of agency implementation plans.

Tasks

1. Develop guidelines, in consultation with the agencies, for use by disbursing agencies in developing their implementation plans.

2. Distribute guidelines to the agencies.

3. Notify agencies of the date by which their draft implementation plan will be due for submission to Justice.

4. Review agency draft implementation plans; provide agencies with written comments and recommendations; negotiate corrections to agency plans, as appropriate.

5. Approve corrected, final agency implementation plans.

Objective #4

Pursuant to §1-203 of Executive Order 12250, develop and prescribe uniform and consistent standards and procedures for (a) taking enforcement actions, (b) conducting investigations, and (c) conducting compliance reviews under any Federal statute, Executive Order, regulation, or policy requiring nondiscrimination in programs receiving Federal financial assistance and federally conducted programs in the case of Section 504.

Tasks

1. Research relevant case law, legislative histories, prior policy issuances and other appropriate materials of Federal agencies and DOJ.

2. Develop, in consultation with EEOC and disbursing agencies, appropriate guidance materials for agencies in the following areas: (a) enforcement actions, (b) complaint investigations, and (c) compliance reviews.

3. Issue a compilation of these guidance materials in the form of a Civil Rights Enforcement Manual.

4. Revise and update DOJ guidance materials as needed.

Objective #5

Conclude Federal law review for sex discrimination (i.e., Task Force on Sex Discrimination.

Tasks

1. Analyze meterials.
2. Negotiate with agencies
3. Formulate recommendations.
4. Close agencies' files.
5. Prepare and issue final report to the President on work of the task force.

Objective #6

Develop and implement systems for (a) review of policy questions and legal issues associated with civil rights enforcement, and (b) review and approval of agency non-regulatory directives pursuant to §1-402 of the Executive Order. Provide agencies with direct assistance to ensure that such directives, policies, and legal opinions are consistent with Attorney General standards.

Tasks

(a) 1. Establish standard operating procedures for receipt and handling of policy questions and requests for legal opinions.

2. Research legal and policy questions, submitting draft legal opinions and policy directives as needed to the appropriate consultation and clearance process.

3. Determine applicability of policy and/or legal opinion, and issue, as appropriate, to agencies.

(b) 1. Establish an internal system for reviewing agency non-regulatory directives, pursuant to §1-402 of the Executive Order, and providing DOJ approval, as appropriate.

2. Coordinate consultation of proposed non-regulatory directives with the EEOC and, as appropriate, with the public interest bar and special interest groups.

3. Monitor district court, court of appeal, and Supreme Court cases, and prepare analyses of relevant law for distribution as needed.

4. Monitor DOJ litigation positions and policy issuances from other agencies to insure consistency with OCR policy issuances.

Objective #7

Review and evaluate agency civil rights enforcement programs or particular compliance systems through the conduct of indepth interagency surveys and audits (81-302) designed to determine whether or not such programs or systems are in compliance with the standards established by the Attorney General's coordination regulations or as published guidelines pursuant to Executive Order 12250.

Tasks (for each type of review)

1. Target and identify agencies or systems appropriate for survey or audit.

2. Develop a work plan, including a statement as to the purpose and scope of the survey or audit, and provide notification to the agency.

3. Prepare survey questionnaire and/or audit instrument, conduct background research on agency or issues(s).

4. Conduct audit and/or disseminate survey questionnaires.

5. Collate and evaluate resulting data.

6. Prepare report of audit/survey findings.

7. Recommend, as appropriate, to the Attorney General, remedial actions necessary to improve the effectiveness of program or system.

8. Direct agency to take necessary corrective action.

9. Follow-up to insure that corrective action has been taken and has been effective in alleviating problems.

10. Monitor agencies on regular basis.

Although the methodology for auditing any agency will be the same, the resources required to do an audit of a major agency as opposed to a minor agency will vary by the size and scope of its covered programs. Additionally, a major agency is often decentralized and contains several principal operating components which independently administer assistance programs. (The Departments of Health and Human Services, Transportation, Education, Agriculture, Defense, Commerce, and Labor are examples of major agencies.) A minor agency is one which administers small assistance programs, normally one or two related programs, through single national office structure that does not include independent sub-components. Often a portion of the minor agency's program is or can be delegated to a major agency funding similar recipients. (Examples of minor agencies are: Office of Personnel Management, National Aeronautics and Space Administration, National Science Foundation, National Endowment for the Humanities, and National Endowment for the Arts.)

In the case of a survey of an issue or system, the resources required will be minimal. A survey of this type involves examination, through use of questionnaires or an on-site investigation, of a particular civil rights issue or

compliance system which has general applicability and about which an issue has been raised that requires examination.

Objective #8

Develop and implement computer-assisted systems to monitor agency enforcement of civil rights programs. Three systems are planned: (a) a system to monitor agency complaint processing (currently under development); (b) a system to monitor agency enforcement actions taken pursuant to findings of noncompliance; and (c) a system to monitor agency compliance reviews.

Tasks

1. Revise existing systems (complaints/findings of noncompliance) and reporting forms to include sex and handicap.
2. Design new management information system for tracking compliance reviews; develop system specifications and reporting forms.
3. Test pilot programs and debug the system.
4. Collect data and input into the system.
5. Verify data.
6. Monitor agency performance.
7. Modify system as needed.

OBJECTIVE #9

Provide staff support to the Attorney General or his/her designee as Chair of the Interagency Coordinating Council.

Tasks

1. Develop agenda items.
2. Research issues.
3. Develop appropriate guidance materials for affected agencies.
4. Provide logistical and clerical support for council operation.
5. Prepare an annual report to the Congress.

Objective #10

Coordinate and review agencies' submissions of Section 53 OMB Circular A-11 Budget Reports; provide OMB with an assessment of the adequacy of agency resources allocated to civil rights enforcement based on evaluation of the data submitted in the A-11 report.

Tasks

1. Determine, in conjunction with OMB, whether revisions are needed in Section 53 of OMB Circular A-11.

2. Revise the Circular and its instructions as appropriate.

3. Prepare and send instruction letters to reporting agencies.

4. Contact reporting agencies to facilitate A-11 preparation and submission.

5. Review agency A-11 reports to assess the adequacy of requested resources based on workload and performance indicators.

6. Consult with OMB as to findings and recommendations.

7. Participate with OMB, when requested, in selected reviews to validate the accuracy of reported data.

Objective #11

(a) Develop procedures with affected agencies, including the use of memoranda of understanding and delegations of authority, to minimize duplicative investigations or compliance reviews of particular recipients or classes of recipients pursuant to §1-207 of the Executive Order.

(b) Develop cooperative information sharing systems, and provide for the sharing of compliance records, findings, and supportive documentation amongst agencies pursuant to §1-206 of the Executive Order.

(c) Establish a clearinghouse for the sharing of technical expertise and materials in the area of services enforcement and compliance, particularly as it relates to §504.

Tasks

(a) 1. Develop draft delegation agreements for enforcement of Title VI, Title IX, Section 504 and other relevant discrimination statutes.

2. Identify categories of recipients appropriate for delegation agreements.

3. Identify funding agencies by category of recipient.

4. Contact agencies with existing delegation agreements to inform them of the development of new delegation agreements, and facilitate the signing of new delegation agreements, as appropriate.

5. Monitor the effectiveness of agreements, once in place; evaluate delegation system.

6. Facilitate revision, recission, or adoption of new delegation agreements as appropriate when agencies' programs or operations change.

(b) 1. Identify agency relationships which suggest the appropriateness of sharing compliance information.

2. Develop systems for the use of shared compliance information.

3. Facilitate the negotiation of appropriate agreements between agencies for the sharing of compliance information.

4. Ensure the publication of both types of agreements in the Federal Register, and maintain copies at the Department of Justice.

5. Monitor and evaluate operation of systems.

6. Revise systems as appropriate in light of new programs, new information sharing needs, or changes in agency relationships.

(c) 1. Develop and distribute "needs assessment" instrument to determine specialized expertise or technical documents/resource materials needed by agency civil rights offices to effectively enforce Title VI, Title IX, Section 504, and other relevant statutes.

2. Identify, compile and catalog available specialized and/or technical resources (both human and material) within the private and public sectors.

3. Act as a clearinghouse for requests for specialized expertise or technical documents from this resource bank.

4. Provide agencies, upon request and as resources permit, with assistance in establishing, implementing, or fine tuning their compliance, enforcement or management systems and in developing policies, procedures and guidelines consistent with the Attorney General's standards.

Objective #12

Develop uniform recordkeeping and reporting requirements to be utilized by disbursing agencies, and issue, in conjunction with OMB and EEOC, government-wide policies regarding data collection via application for benefits and application for assistance, and for reporting the data collected via post-award reports pursuant to #1-206 of the Executive Order.

Tasks

1. Survey existing application forms, data collection systems, data bases, and other systematized information sources.

2. Analyze information obtained.

3. Identify inconsistent, duplicative, superfluous, or inadequate data systems.

4. Develop uniform guidelines for collection, recordkeeping, and reporting of data on eligible populations, applicants, beneficiaries, and participants, utilizing appropriate consultation and clearance processes.

5. Publish and distribute policy in conjunction with OMB and EEOC.

6. Review future data needs and data instruments.

7. Review and revise guidelines as new data issues or new data needs require.

Objective #13

Determine training needs of disbursing agencies, and assist those agencies in the development of appropriate training programs for their staff. In conjunction with EEOC and OMB, determine the most effective government-wide approach to providing civil rights training to Federal staff, and establish standards for such programs pursuant to 81-266 of the Executive Order.

Tasks

1. Develop instrument to survey existing universe of training programs and training needs.

2. Evaluate content of existing training programs, and assess agency training needs based on that evaluation.

3. Establish, in conjunction with the EEOC and in consultation with disbursing agencies, standards for agency civil rights training programs.

4. Develop new or revised training modules and materials as needed, focusing on feasibility of joint training.

5. Present and/or participate in training programs.

6. Evaluate training programs presented.

7. Revise training modules and materials as appropriate in light of changing case law and policy directives, new programs, or new approaches to enforcement.

Objective #14

Develop and implement consistent standards and procedures for cooperating with state and local agencies (including the sharing of information, deferring of enforcement activities, and providing technical assistance) pursuant to 81-266 of the Executive Order.

Tasks

1. Survey to determine status of present federal/state/local cooperative systems.

2. Assess effectiveness of present systems, identify deficiencies, and develop needs.

3. Develop standards and procedures for federal/state/local cooperative systems to address deficiencies and needs.

4. Disseminate standards and procedures to appropriate entities.

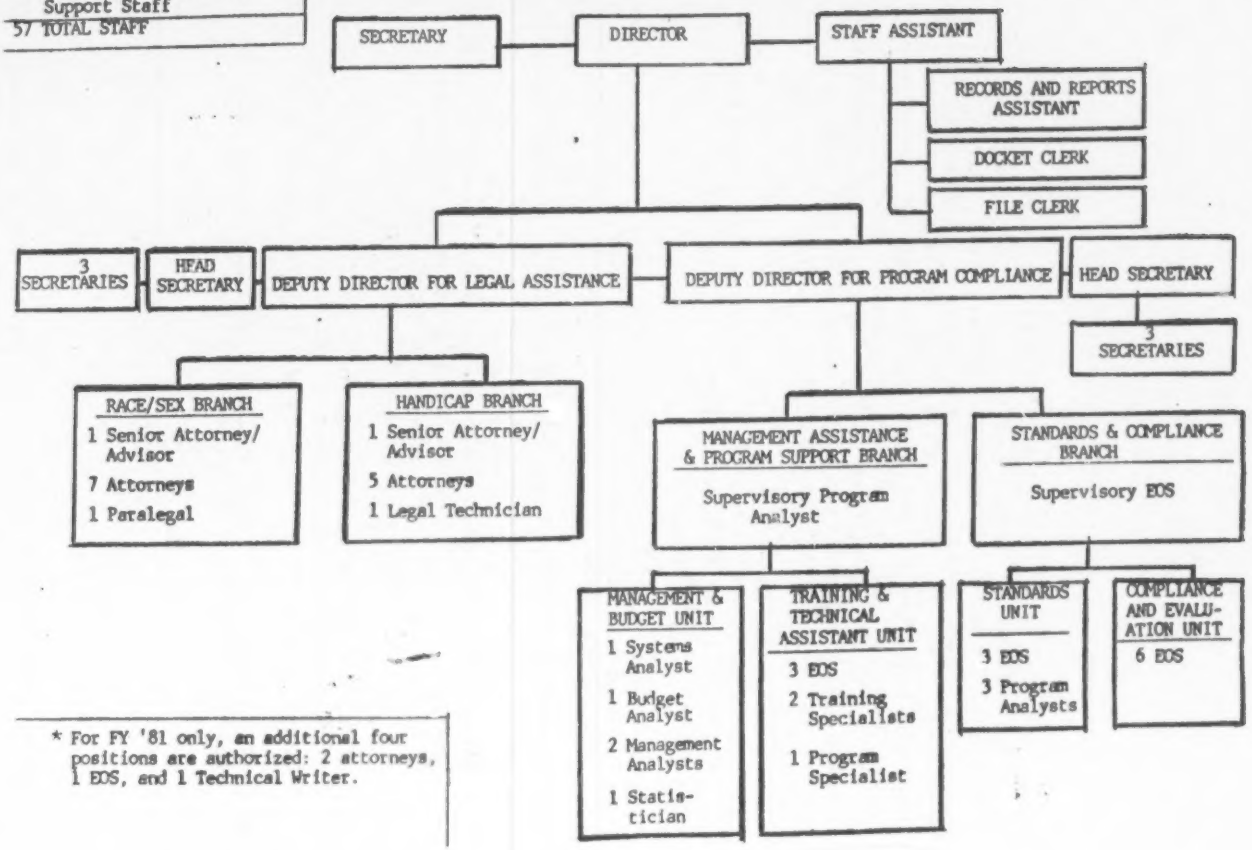
5. Provide assistance for establishment and operation of the systems according to the standards.

6. Monitor effectiveness of established systems.

TAB B-2

OFFICE OF COORDINATION AND REVIEW
PROPOSED ORGANIZATIONAL STRUCTURE *

7 Managers/Supervisors
12 Attorneys
25 Non-Attorney Professionals
13 Secretarial/Administative Support Staff
57 TOTAL STAFF



* For FY '81 only, an additional four positions are authorized: 2 attorneys, 1 EOS, and 1 Technical Writer.

TAB B-3

CIVIL RIGHTS DIVISION

OFFICE OF COORDINATION AND REVIEW

Mission. To eliminate discrimination based on race, color, national origin, sex, religion or handicap in programs receiving Federal financial assistance and to eliminate discrimination based on handicap in federally conducted programs. The office is charged with the responsibility for implementing Executive Order 12250 which coordinates the enforcement of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and kindred laws.

Functions.

a. Provides government-wide coordination, oversight, and standardized implementation of assigned civil rights laws.

b. Provides legal and management expertise to Federal agencies concerning design and implementation of civil rights programs.

c. Conducts evaluations of the civil rights programs of Federal agencies.

d. Generates recommendations for the Assistant Attorney General, Civil Rights Division, the Attorney General, and top staff in other Federal agencies concerning methods to improve civil rights programs.

e. Provides recommendations for the Director of the Office of Management and Budget (OMB) concerning funding levels for civil rights programs of Federal agencies.

f. Publishes a quarterly newsletter which provides information on enforcement activities.

RACE/SEX BRANCH

Mission. To eliminate discrimination based on race, color, national origin or sex in programs receiving Federal financial assistance by providing legal expertise and policy direction to Federal agencies and state and local governments concerning enforcement of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, and kindred laws.

Functions. Under the executive direction of the Director of the Office of Coordination and Review, the Race/Sex Branch:

a. Develops regulations and sets minimum legal standards for Federal agencies' civil rights enforcement responsibilities under assigned statutes.

b. Evaluates Federal agencies' regulations for legal adequacy and for government-wide consistency.

c. Advises, reviews, and approves new agency regulations or changes in existing regulations to achieve compliance with civil rights standards.

d. Advises Federal agencies on case law or administrative law developments and on legal questions raised by agencies.

e. Prepares and reviews proposed civil rights legislation.

f. Provides substantive legal expertise concerning assigned statutes to Federal agencies and Civil Rights Division litigation staff.

g. Coordinates delegation agreements among Federal agencies concerning civil rights enforcement responsibilities.

h. Provides recommendations for top staff concerning applicability of assigned statutes to Federal agencies.

HANDICAP BRANCH

Mission. To eliminate discrimination based on handicap in programs receiving Federal financial assistance and in programs conducted by the Federal Government by providing legal expertise and policy direction to Federal agencies and state and local governments concerning enforcement of Section 504 of the Rehabilitation Act of 1973 and kindred laws.

Functions. Under the executive direction of the Director of the Office of Coordination and Review, the Handicap Branch:

a. Develops regulations and sets minimum legal standards for Federal agencies' civil rights enforcement responsibilities under assigned statutes.

b. Evaluates Federal agencies' regulations for legal adequacy and for government-wide consistency.

c. Advises, reviews, and approves new agency regulations or changes in existing regulations to achieve compliance with civil rights standards.

d. Advises Federal agencies on case law or administrative law developments and on legal questions raised by agencies.

e. Prepares and reviews proposed civil rights legislation.

f. Provides substantive legal expertise concerning assigned statutes to Federal agencies and Civil Rights Division litigation staff.

g. Coordinates delegation agreements among Federal agencies concerning civil rights enforcement responsibilities.

h. Provides recommendations for top staff concerning applicability of assigned statutes to Federal agencies.

STANDARDS AND COMPLIANCE BRANCH

Mission. To eliminate discrimination under assigned statutes in programs receiving Federal financial assistance or in federally conducted programs by providing formal evaluations of Federal agencies' programs.

Functions. Under the executive direction of the Director of the Office of Coordination and Review, the Standards and Compliance Branch:

a. Develops methodologies and conducts studies to identify and analyze data for assessing impact of Federal funding programs on minorities, women, and other protected groups.

b. Establishes operational standards and procedures to ensure effective enforcement of Federal agencies' civil rights programs.

c. Reviews Federal agencies' operations to determine whether established program requirements are being met.

d. Assists Federal agencies in planning and implementing changes necessitated by new legislation, case law, administrative law, or regulatory revisions.

e. Prepares evaluations and reports on costs and achievements efforts as they relate to the impacts of funding programs.

f. Evaluates Federal agencies' data collection instruments.

g. Drafts and publishes government-wide newsletter on civil rights enforcement.

MANAGEMENT ASSISTANCE AND PROGRAM SUPPORT BRANCH

Mission. To eliminate discrimination under assigned statutes in programs receiving Federal financial assistance or in federally conducted programs by ensuring that Federal agencies utilize appropriate and efficient management policies and resource allocation techniques and by ensuring that Federal agencies' staff possess sufficient expertise and knowledge concerning civil rights enforcement.

Functions. Under the executive direction of the Director of the Office of Coordination and Review, the Management Assistance and Program Support Branch:

a. Compiles and analyzes information and provides recommendations for OMB concerning Federal agencies' A-11 Reports and civil rights funding levels.

b. Develops methodologies and conducts surveys concerning cost-benefit analysis of Federal agencies' civil rights enforcement programs.

c. Provides recommendations concerning the applicability of electronic data processing equipment, electronic word processing equipment and micrographic equipment to civil rights enforcement programs.

d. Conducts management audits of Federal agencies' civil rights offices.

e. Identifies Federal agencies' training needs.

f. Develops and conducts training sessions for agency personnel on civil rights responsibilities and compliance techniques.

g. Identifies, collects, and analyzes information relevant to the operation of civil rights programs.

TAB B-4

THE IMPACT OF DOJ'S PROPOSED IMPLEMENTATION PLAN ON AGENCY OPERATIONS

Proposed DOJ Action	Target Date	Agency Action Required	Proposed Due Date	Related Objective/Task
(1) Circulate draft coordination regulations for agency comment prior to initial publication in Federal Register	December, 1980	consultation on content of regulations	15 days after receipt of draft regulations	1-3
(2) Circulate proposed guidelines for use by agencies in developing implementation plans	December, 1980	consultation on content of guidelines	15 days after receipt of proposed guidelines	3-1
(3) Circulate questionnaire in conjunction with EEOC, "feasibility study design"	December, 1980	complete and return questionnaire	30 days from receipt	11(c)-1; 13-2
(4) Distribute guidelines to the agencies, and notify agencies of the date by which their draft implementation plan is due	January, 1981	develop implementation plan and submit to DOJ for review	60 days after receipt of notification	3-3
(5). Contact all agencies which must either revise current regulations or promulgate new regulations to advise them of their responsibilities	January, 1981	revise or draft regulations, as appropriate, and submit to DOJ for initial review	120 days from receipt of notice	2-4
(6) Circulate proposed uniform standards and procedures for enforcement actions	Jan./Feb., 1981	consultation on content of uniform standards and procedures	15 days from receipt of draft materials	4-2(a)

THE IMPACT OF DOJ'S PROPOSED IMPLEMENTATION PLAN ON AGENCY OPERATIONS

Proposed DOJ Action	Target Date	Agency Action Required	Proposed Due Date	Related Objective/Task
(7) Publish proposed coordination regulation in Federal Register	Feb./Mar., 1981	provide comments within comment period	30 days after publication of proposed regs	1-4
(8) Circulate revised reporting forms for (a) complaints and (b) findings of noncompliance	February, 1981	consultation on content of revised reporting forms	15 days after receipt of revised form	8-2
(9) Circulate revised delegation agreement form	Feb./Mar., 1981	consultation on content of revised delegation agreement form	15 days after receipt of revised agreement	11(a)(1)
(10) Issue final policy on the collection of race, national origin, sex, and handicap data during the application for benefits process in conjunction with EEOC standards	Mar./Apr., 1981	implement	--	12-4
(11) Circulate comprehensive questionnaire to agencies re: data collection systems, data bases, management information systems, etc.	April, 1981	complete and return questionnaire	45 days from receipt	12-1
(12) Approve agency implementation plans	April, 1981	none	--	3-5
(13) Circulate proposed uniform standards and procedures for conducting complaint investigations	Apr./May, 1981	consultation on content of uniform standards and procedures	15 days from receipt of draft materials	4-2(a)

THE IMPACT OF DOJ'S PROPOSED IMPLEMENTATION PLAN ON AGENCY OPERATIONS

Proposed DOJ Action	Target Date	Agency Action Required	Proposed Due Date	Related Objective/Task
(14) Publish final coordination regulations in Federal Register	May, 1981	none	--	1-6
(15) Circulate draft standards for civil rights training programs	May/June, 1981	consultation on content of draft standards	15 days from receipt of standards	13-3
(16) Distribute approved revised reporting forms with instructions for completion	June, 1981	submit required reports	July, 1981	8-4
(17) Circulate proposed uniform standards and procedures for conducting compliance reviews	June/July, 1981	consultation on content of uniform standards and procedures	15 days from receipt	4-2(b)
(18) Contact agencies to facilitate A-11 preparation and submission	July, 1981	submit A-11 report to DOJ	September, 1981	10-4
(19) Publish Civil Rights Enforcement Manual	September, 1981	none	--	4-3
(20) Issue final Report to the President from the Task Force on Sex Discrimination	October, 1981	none	--	5-5
(21) Review A-11 submissions and report assessments on each agency to OMB	October, 1981	--	--	10-5, 10-6

THE IMPACT OF DOJ'S PROPOSED IMPLEMENTATION PLAN ON AGENCY OPERATIONS

Proposed DOJ Action	Target Date	Agency Action Required	Proposed Due Date	Related Objective/Task
(22) Notify agency that inter-agency survey will be undertaken (a) Commerce (b) USDA/OEO (c) CSA followup	ongoing January 1981 April, 1981	cooperate with DOJ staff	—	7-1
(23) Circulate questionnaire to agencies re: application for benefits forms	ongoing	respond to questionnaire	November, 1980	12-1
(24) Contact with agencies Task Force on Sex Discrimination Review	ongoing	respond to DOJ requests	ongoing	5-2
(25) Contact agencies with existing delegation agreements to facilitate signing of new delegation agreement form	ongoing	sign revised agreements	60 days after contact	11(a)(4)
(26) Circulate proposed legal opinions and policy issuances	as needed	consultation on content of draft legal opinion or proposed policy issuance	15 days from receipt of draft opinion, or policy proposed	6-2
(27) Issue legal opinions and policy issuances	as needed	implement and maintain on file	—	6-3
(28) Review and approve agency non-regulation policy directives submitted for review	30 days after receipt from agency	submission of non-regulatory policy directives to DOJ for review	as needed	6-5

BUSING

Senator WEICKER. How many cases does the Division currently have in which the Department is seeking busing as a remedy for segregation?

Mr. TURNER. There are several active cases, Senator. The total number I don't have at my fingertips. There is a residual of some 450 cases in which the court has ordered school desegregation and in which the Federal Government is involved either as a party or friend of the court. Some of those include busing as a remedy, but many of them do not. I would be glad to give you a breakdown on that to supplement the record.

[The information follows:]

RESPONSE TO INQUIRY CONCERNING EDUCATION CASES

There are approximately 34 school districts operating under court orders that have only recently been imposed or are now being litigated. In addition, there are cases involving approximately 17 school districts that are not under a comprehensive court desegregation order where the question of liability is now being litigated in court. Whether student transportation for desegregation will be necessary as a remedy in the 51 cases in some stage of active litigation will depend on the factual circumstances of each case.

PRACTICAL EFFECT OF SCHOOL BUSING LEGISLATION

Senator WEICKER. Has the Department made a determination on the criteria it will apply in determining whether to bring busing cases?

Mr. TURNER. The only criteria we have, and while the matter is continually under review, the one I expect to continue to use, absent direction from Congress, is the one the Federal courts have set forth and the one the Congress has set forth in legislation. Essentially that provides a list of remedies, of which busing is at the bottom.

There will be a number of cases which may have to include that remedy in order to meet the legal standards which the courts and Congress have set forth.

Senator WEICKER. Setting the constitutional question aside, setting any policy questions aside, would you care to comment on what you believe would have been the effect had that amendment passed the Senate and been signed into law, which restricted the Justice Department from seeking busing as a remedy, either directly or indirectly?

Mr. TURNER. I am not sure I can make a comment on that, Senator. The legislation would have prohibited any expenditure of the funds to require in our litigation the use of busing as a remedy. Of course, there is a threshold constitutional issue which the former Attorney General pointed out.

Senator WEICKER. I am trying to set that aside.

Mr. TURNER. Setting that aside, I think we would have to try to devise a way to continue our litigation without violating the rules imposed by Congress. Given the present state of the law, it would be hard to do, but there might be ways that we can come up with.

Senator WEICKER. You are a professional, Mr. Turner?

Mr. TURNER. I am, I have been here for the last 16 years.

Senator WEICKER. Let me just say this. My comments are not directed, obviously, to you and the circumstances. But I find curtailment of personnel in your Division, taken in conjunction with other statements emanating from the administration, both from the Department of

Education and the President himself, as creating an impression that there is somewhat less than an enthusiastic attitude by this administration toward enforcement of the civil rights laws of this Nation. I intend to take a careful look at the budget of this particular Division. I don't want to send a signal out of this committee that we are any less committed. I am as committed to civil rights as I have ever been. But as far as the leadership, there has been the propensity to duck the hard one. As long as I am chairman of this subcommittee, I am not going to send this signal out of this committee. I think this Division is crucial. I think it is working. There is as much work now as there was last week, as there was last year, as there was 10 years ago. I don't think we are kidding ourselves on that point. I am certainly not going to do it in the allocation of moneys.

I realize my comments are separate and apart from the job that you do in that Division. I am sure it is a fine job. I am addressing myself to the policy question as it appears and translates itself in the budget.

Mr. TURNER. I am certain, Mr. Chairman, that the Department and, of course, the Division would be pleased to provide any supporting documentation that the committee might wish.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. Other questions will be submitted for the record. Thank you, gentlemen.

Mr. ROONEY. Thank you, Mr. Chairman.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Tax Division

Collection of Judgments

On page 33 of your original justification for FY 1982, you state that during 1979, $3,612,353 was collected in criminal and civil fines and penalties. How much is still outstanding?

As of October 1, 1980, $70,785,432.28 in civil and $8,017,821.58 in criminal judgments, fines and penalties was outstanding in cases pending in the Tax Division's Judgment and Collection Unit.

What percentage of that will we be able to recover?

Tax judgments fall into several categories, each of which has to be considered separately. Many of our suits to reduce assessments to judgment are made after the Internal Revenue Service has used its administrative remedies to attempt to effect collection for almost six years. These suits represent a last ditch effort at collection, and the prospect of even partial collection is very poor. If there are known assets at the time the suit is instituted, the Government will generally seek to foreclose the tax lien at the same time that the judgment is obtained. As to these suits, there will be immediate collection on entry of judgment (which is not reflected in the Judgment and Collection Unit figures), followed by a period during which collection can be effected only from the debtor's after-acquired assets or earnings. If an action is instituted as a tax refund suit and the Government asserts a counterclaim, usually administrative efforts at collection are suspended during the pendency of the action. It is this category of collection action which offers the greatest collection potential.

Obviously, the collection potential will vary from judgment to judgment, and will depend on the taxpayer's ability to pay. Other differences between cases are that excise tax judgments (for example, wagering or marijuana excises) will tend to be large, and generally impossible to collect in full (indeed, any collection in these cases will be very arduous), whereas income tax judgments will tend to be smaller but, in general, somewhat easier to collect.

It must also be noted that the Judgment and Collection Unit's efforts with respect to civil tax judgments involve only the most difficult collection matters. By the time a case reaches the Judgment and Collection Unit, either the Internal Revenue Service (through its administrative collection procedures prior to referral of the case to the Department of Justice) or the Division trial attorney (through lien foreclosure, execution, or similar post-judgment measures) often will have collected some portion of the outstanding liability from the known income or other asset sources of the taxpayer.

Collection of criminal tax fines is substantially easier than civil collections. Fines tend to be for much smaller amounts, and if imposed as a condition of probation there is a powerful incentive for their payment. However, as in the case of civil tax judgments, collection will depend on the defendant's ability to pay.

How many other Divisions are involved in collection of judgments owed the government? How are these efforts coordinated?

The Tax, Civil, Criminal, Antitrust, and Land and Natural Resources Divisions are involved in the collection of judgments. The Attorney General had established a Committee on Collections, which had representatives from each of the five divisions involved in the collection of judgments, the Justice Management Division, and the Executive Office for U.S. Attorneys. The function of this Committee was to oversee improvements in collection activities throughout the Department and the effectiveness of accounting for collections. In addition, the Executive Office for U.S. Attorneys periodically conducts Collections Conferences, at which procedures and problem areas in the collection of judgments are addressed. These conferences are attended by personnel in the legal divisions and U.S. Attorneys' offices engaged in collection of judgments. Of the four conferences planned for fiscal 1981, one was held (San Antonio, Texas, October 6-10, 1980) and the other three were cancelled because of budget restrictions.

We also wish to note that the concept of centralization of collection efforts has been examined on several occasions. The Tax Division is of the opinion that the present policy of collecting on tax judgments should be continued, since there are substantial differences between collection of tax judgments and collection of other civil judgments. While the Tax Division is able to obtain tax return information from the Internal Revenue Service on tax judgment debtors under the Tax Reform Act of 1976, this information is prohibited from disclosure in the collection of non-tax judgments in favor of the United States; constant vigilance would be necessary to assume that this difference was observed. There are other significant differences between tax judgment collection and other judgment collection as follows:

(a) The ability of the Internal Revenue Service to levy on the taxpayer's property, if the 6-year period for levy under Section 6331 of the Internal Revenue Code has not expired at the time the judgment is obtained, is extremely valuable. It permits garnishment of wages, for example, in states where garnishment is not permitted for judgment collection generally.

(b) Homestead and other state law exemptions, applicable as to United States judgments generally, are inapplicable as to tax judgments.

(c) An Internal Revenue Service investigation of tax debtor's financial statement is usually more helpful than an FBI investigation.

Centralized, as compared to tax-oriented supervision, might be insufficient to provide direction in these areas.

What avenues are available to you when collecting the outstanding fines and penalties?

The Tax Division has available whatever remedies are available to judgment creditors under state law. For example, garnishment of wages is permitted in some states, but not in others. In addition, as noted in response to the prior question, if the 6-year period for collection under Section 6502 of the Internal Revenue Code has not

expired at the time the judgment is entered, the Internal Revenue Service may levy on the taxpayer's property pursuant to Section 6331 of the code. Generally, however, the 6-year period has expired at the time of entry of judgment, since, as noted in our response to question (2), many of our suits to reduce assessments to judgments are made after the Internal Revenue Service has used its administrative remedies for almost six years.

Land and Natural Resources Division

ADP Procurement

An increase of $444,000 is requested in FY 1982 for ADP procurement for the Land and Natural Resources Division. Please provide details of how this money will be used.

The program increase of $444,000 will provide resources for litigation support and for existing case management systems, specifically automated legal research files on various environmental statutes, computerized document oriented discovery files in support of specific cases and further enhancements to the Land and Natural Resources Division's docket tracking and attorney time reporting systems.

Withdrawal of Supplemental

There are a number of new statutes enacted within the last Congress--including the Ocean Thermal Energy Conversion Act for which NOAA is preparing regulations--which could give rise to additional litigation. How is the Division prepared to handle these cases?

When the supplemental for the Land and Natural Resources Division was withdrawn it was decided to implement an across-the-board strategy in imposing the reduction of 47 positions. This strategy was used to minimize the impact on the Division and to ensure that viable litigation programs were maintained. The specific reductions were made only after assessing the Division's caseload priorities and reviewing the Section's present and expected caseload.

What impact will the decision to withdraw the supplemental have on the Division?

Overall, the withdrawal of the supplemental will mean an increase in the number of cases delegated to the U.S. Attorneys. The Lands Division, through its across-the-board reduction strategy, has maintained the ability to vigorously enforce the environmental statutes and its other responsibilities. The Division will continue to place in high priority the litigation of those cases where the health, safety and welfare of the public is seriously jeopardized.

What priorities will be set for enforcement?

Additional priorities will be determined in consultation with the new leadership of the Lands Division's client agencies. Substantial case referrals can be expected from the Solid Waste Disposal Act Amendment of 1980, P.L. 96-482, the Comprehensive Environmental

Response, Compensation and Liability Act of 1980, P.L. 96-510, and the provision that extends the statute of limitations as it applies to certain Indian claims, P.L. 96-213.

New Statutes

For the record, will you provide the Subcommittee with a complete list of new statutes and regulatory activities on which the original (Land and Natural Resources Division) budget request for fiscal years 1981 and 1982 was based?

42 U.S.C. 8701 - Energy Security Act (P.L. 96-294)

P.L. 93-402 - An Act to Establish the Great Dismal Swamp National Wildlife Refuge, as Amended by P.L. 96-291

16 U.S.C. 6680 - An Act to Provide for the Establishment of the San Fransisco Bay National Wildlife Refuge, as Amended by P.L. 96-290

16 U.S.C. 668 - An Act to Establish the Bogue Chitto National Wildlife Refuge (P.L. 96-288)

16 U.S.C. 668 - An Act to Establish the Tensas River National Wildlife Refuge (P.L. 96-285)

30 U.S.C. 1401 - Deep Seabed Hard Mineral Resources Act (P.L. 96-283)

P.L. 96-274 - Inheritance of Trust or Restricted Land on the Standing Rock Sioux Reservation, N.D. and S.D.

20 U.S.C. 3601 - Asbestos Shool Hazard Detection and Control Act of 1980 (P.L. 96-270)

16 U.S.C. 668dd - An Act to Establish the Bon Secour National Wildlife Refuge (P.L. 96-267)

16 U.S.C. 590 - Soil Conservation and Domestic Allotment Act, as Amended by P.L. 96-263

P.L. 96-189 - Amended Bear River Compact

16 U.S.C. 1300 - Water Bank Act, as Amended by P.L. 96-182

P.L. 96-164 - DOE National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (authorizes dollars for land acquisition)

42 U.S.C. 5301 - Housing and Community Development Amendments of 1979 (P.L. 96-153)

45 U.S.C. 1001 - Railroad Revitalization and Regulatory Reform Act of 1976, as Amended by P.L. 96-254, Rock Island Railroad Transition and Employee Assistance Act, and the Passenger Railroad Rebuilding Act of 1980 (also P.L. 96-254)

P.L. 96-251 - An Act to Permit Cow Creek Bank of Umpqua Tribe to File Claims

P.L. 96-248 - Act of November 8, 1978, (designating Certain Cibola National Forestlands as National Wilderness Lands)

P.L. 96-238 - An Act authorizing Secretary of Army to Transfer Army Lands to the Michigan Job Development Authority

P.L. 96-229 - Environmental Research, Development, and Demonstration Authorization Act of 1980

25 U.S.C. 761 - Paiute Indian Tribe of Utah Restoration Act (P.L. 96-227)

42 U.S.C. 8501 et seq. - Emergency Energy Conservation Act of 1979 (P.L. 96-102)

16 U.S.C. 757 - Anadromous Fish Conservation Act, as Amended by P.L. 96-118

P.L. 96-125 - Military Construction Authorization Act, 1980

P.L. 96-126 - Department of Interior and Related Agencies Appropriations of FY 1980

16 U.S.C. 4601 - Land and Water Conservation Fund Act of 1965, as Amended by P.L. 96-203

P.L. 96-133 - Amending Energy Policy and Conservation Act, as Amended by P.L. 96-133

P.L. 96-495 - Suisun Marsh Preservation and Restoration Act of 1979

P.L. 96-492 - Transferring Colorado Land and Mineral Interest to Ute Mountain Tribe

P.L. 96-491 - Trust Lands for Moapa Band of Paiutes

16 U.S.C. 46011 - Rattlesnake National Recreation Area and Wilderness Act of 1980 (P.L. 96-476)

P.L. 96-475 - To Exchange Certain Federal Coal Leases for others in N.M.

P.L. 96-474 - To Exchange Certain Federal Property in Kisatchie National Park, for other property

P.L. 96-203 - An Act to Authorize Conveyance of Lands in Arkansas

P.L. 96-59 - An Act to Authorize the Conveyance of Lands to Board of Education in Kentucky

P.L. 96-55 - An Act to Authorize Conveyance of Federal Land to Nerara, Alaska

P.L. 96-48 - National Aeronautics and Space Administration Authorization Act (Dollars for Land Acquisition)

P.L. 96-344 - Amending Historic Sites Buildings and Antiquities Act

P.L. 96-339 - Amendments to Atlantic Tunas Convention Act of 1975

P.L. 96-336 - Amending the Act of June 24, 1974 (Colorado River Basin Salinity Control Act and Small Reclamation Projects of 1956)

P.L. 96-332 - Amending Title III of the Marine Protection Research and Sanitaries Act of 1972

P.L. 96-320 - Ocean Thermal Energy Conversion Act of 1980

P.L. 96-312 - Central Idaho Wilderness Act of 1980

P.L. 96-305 - Navajo and Hopi Indian Relocation Amendments, Act of 1980

P.L. 96-199 - National Parks and Recreation Act of 1978 Amendments

Civil Division

Private Counsel Fees

There is a $500,000 supplemental requested for private counsel fees. Is all this money expected to be spent in fiscal year 1981?

Yes. The expected expenditure of $500,000 results from the following factors. It is estimated that approximately 15 contracts for private counsel services will be established in FY 1981 (this is approximately the same number established in each of the last two fiscal years). As the result of higher rates per contract, $380,000 will be needed to fund these 15 contracts. In addition, approximately $120,000 will be needed to fund private counsel services anticipated for 1980 which were, because of other fiscal demands on the Division, postponed until they could be met by supplemental funding in 1981.

How much is budgeted in fiscal year 1982?

Initially, the Division requested of both the Department and OMB $410,000 for private counsel expenditures for 1982 which represents an 8 percent increase over the anticipated funding requirement for 1981. Approval of this expense, as has been the case in the past budget requests, has been withheld at the recommendation of OMB in anticipation of passage of an amendment to the Federal Tort Claims Act that would eliminate the need to represent, or pay for representation of, employees sued in their individual capacity.

Do you plan on requesting an amendment to the Tort Claims Act to eliminate the need to pay these fees in the future? Has such an amendment been submitted to Congress? When will it be proposed?

In the preceding decade, particularly with the 95th and 96th Congress, the Department has proposed amendments to the Federal Tort Claims Act and actively supported this remedial legislation which is essential in order to provide a financially responsible defendant, remove the threat of personal financial ruin from Federal officials and foster fearless governmental decisionmaking in the public interest.

Currently, a draft proposal is being reviewed within the Department for submission to Congress. In addition, on January 5, 1981, Congressman Danielson of California introduced H.R. 24, a bill to amend the act. Department attorneys have and will continue to work closely with Congressman Danielson and his staff on this bill.

Fraud Against the Government

How many staff years do you intend to devote to cases involving fraud against the government?

It is difficult to specify the exact number of staff years which will be devoted to fraud work in the future. At the present time, approximately 20 attorneys in the Civil Division work on fraud cases full-time. Another 80 devote a portion of their time to fraud cases. Both the hiring freeze and the number of potentially meritorious referrals may alter this over the coming year.

Can you tell us how many fraud cases were referred last year from the FBI and Inspectors General? How many did you accept for further litigative action? How many did you prosecute?

The Department does not have statistics which differentiate between referrals from the FBI and the Inspectors General. We estimate, however, that over 80 percent of referrals come from the FBI. Most FBI "referrals" are merely reports of allegations that contain no judgment as to whether the allegations would give rise to a civil fraud suit. The Civil Division received 4,256 reports in 1980 from the FBI and Inspectors General. Of these, 506 files were assigned to staff attorneys for case development or for a fuller exploration. The reasons for closing over 90 percent of the files are numerous; for example, unknown defendants, lack of a monetary loss to the Government, unsubstantiated allegations or legal insufficiencies, or the loss may already have been recovered through a criminal action or agency administrative procedures.

Fraud cases involving less than $60,000 are not generally handled by Division attorneys. These cases are delegated to U.S. Attorneys. In 1980, 1,592 of the referrals to the Division fell into this category and were forwarded on to the U.S. Attorneys. Other small cases were received directly by the U.S. Attorneys and are not included in our statistics. The number of referrals have been steadily increasing over the past few years, so that many of the 1980 referrals which were assigned to attorneys are still being investigated and developed. During calendar year 1980, approximately 40 new fraud law suits were begun by Division attorneys. Most of these actions involved multiple defendants and large monetary amounts. We do not have statistics on how many fraud suits were filed by the U.S. Attorneys' offices. We also do not have statistics on the number of fraud counts contained in actions which are handled basically as either tort or contract actions. Since large civil cases take a number of years to complete, at any one time hundreds of court cases are pending.

What efforts are being made to recoup losses from fraud?

Apart from the utilization of all Commercial Litigation Branch attorneys in the development of fraud cases, all supervisory personnel

screen incoming reports to assure that any reports with case potential are immediately assigned to attorneys.

In addition, the Division has conducted an intense education program for agency investigators and counsel, as well as Department of Justice personnel. Seminars take place at a rate of two to four per month. An in-depth course on civil fraud will be given for U.S. Attorneys this month. Moreover, every recent meeting of U.S. Attorneys has included some discussion of fraud cases and the chiefs of the civil sections of U.S. Attorneys' offices recently exchanged plans for the coordination of civil and criminal fraud cases. Many of these plans are now functioning.

The Civil Division is also in constant contact with the various Inspectors General, on an individual basis, and through meetings of the Inspectors General Executive Group and counsel to the Inspectors General. The Division has also played a large role in drafting and recommending legislation to be proposed by the Administration. We believe that all of the efforts discussed above, as well as our normal case activities, have resulted in larger fraud recoveries by the Government.

A number of Economic Crime Units have been created to operate in U.S. Attorneys' offices to investigate and prosecute white collar crime. Has the creation of these units brought better coordination between criminal investigators and the Civil Division leading to successful conduct of civil fraud lawsuits?

In some cases, the establishment of Economic Crime Units (ECU's) has resulted in better coordination and the more efficient conduct of civil fraud lawsuits. In such cases, Civil Division attorneys have been informed, from the outset, of the nature of the allegations, the progress of the investigation, and all work necessary to the civil fraud lawsuit has been completed as one comprehensive effort. However, direct referrals from ECU's have not been a major source of cases in the Civil Division. This may reflect the fact that some ECU's are in developmental stages, the fact that many economic crimes which they investigate do not involve monetary losses to the Government, and the possibility that lesser civil cases are referred directly by the ECU's to the civil attorneys within their own U.S. Attorney's office. We are continuing to communicate with the ECU's regarding the identification of good potential civil cases, the remedies available, and methods designed to assure comprehensive, efficient investigations that may result in timely and successful criminal and civil prosecutions.

How much did the government recover last year in civil fraud suits? How much do you estimate will be recovered in FY 1982?

During the past year, fraud recoveries totaled approximately $6,000,000. We expect recoveries to increase over the next few years, unless budgetary restrictions impede normal case handling.

What is the outstanding amount in judgments owed the Government and what is being done to collect? How much do you estimate can be collected?

The Civil Division does not have separate computerized records on the amounts remaining outstanding from fraud judgments. The full panoply

of judgment collection remedies are applied to fraud cases, as they are to all collective judgments.

Civil Division Equipment Procurement

$346,000 is budgeted for the purchase of word processing equipment and other programs relating to management techniques. At a time when we're cutting back across-the-board on positions in the legal divisions, why did this item survive?

Word processing equipment has already increased daily per page productivity by one-third and is expected, within the year, to have increased productivity by sixty percent over the machines which have been replaced. This increased productivity will reduce the need for both clerical overtime and hiring of temporary clerical personnel.

For the record, give me a complete breakdown of how and when this money will be spent.

The $346,000 will be spent in FY 1982 for the renewal rental of approximately 65 word processing machines. This minimum level of word processing capability will increase productivity while reducing the need for clerical overtime and temporary staff.

Questions Submitted by Senator Hollings

Criminal Division

What is the basis of the reduction of 64 positions in the Criminal Division?

The 64-position reduction in 1982 is accompanied by a reduction of 17 workyears. The resulting total for the Criminal Division of 772 positions and 763 workyears brings into closer alignment the number of appropriated positions with current on-board and the number of workyears actually affordable.

What will be the impact on prosecution of Organized Crime, Public Integrity, Fraud, Narcotics, and Internal Security matters by the reductions of 17, 9, 3, 5, and 3 positions, respectively?

The reduction of 37 positions to these programs entails a corresponding reduction of ten workyears, distributed as follows:

	Position Reduction	Workyear Reduction
Organized Crime	-17	-1
Public Integrity	-9	-6
Fraud	-3	-1
Narcotic & Dangerous Drug Prosecution	-5	-1
Internal Security	-3	-1
TOTALS	-37	-10

The Office of Management and Budget established the Division's 1982 full-time equivalent personnel ceiling at 732, or 40 less than the number of authorized permanent positions. This is the same as that for 1981. The Division distributed this ceiling to closely correspond to staff on-board this year. The Public Integrity program, being under ceiling for non-attorney employees, is able to absorb sufficient ceiling reduction to allow the 9-position decrease. Resultant reduced costs allow the 6-workyear reduction.

The workyear reductions in these programs, like those in other programs not shown, will require no reduction in prosecutions handled and only a marginal reduction in investigations and U.S. Attorney support from the level currently underway.

There is an overall reduction of 64 positions in the Criminal Division; why isn't the budget of the Division being reduced by a comparable amount?

The 64 position reduction represents an attempt to bring appropriated positions in line with current on-board strength of the Division. Associated with the 64 position reduction in the Criminal Division is a reduction of 17 workyears. No funds are requested to be reduced along with these workyears as it is unlikely the Division would have been able to support those workyears in 1982. Another reason for a reduction in positions and workyears and not in funds is that consideration is given to the fact that the Criminal Division has had to absorb part of its 1981 increased pay costs even with the anticipated receipt of the pay raise supplemental.

The INTERPOL function is to be transferred to the Criminal Division. What makes up the $475,000 spent on INTERPOL in the General Administration appropriation?

The $475,000 to be transferred from the General Administration appropriation to the Criminal Division in FY 1982 is intended solely for the membership dues of the United States in INTERPOL for 1982.

How does the Criminal Division's base for INTERPOL get to $739,000 if only $475,000 is being transferred from General Administration?

The Criminal Division will reprogram 6 positions and $264,000 from existing 1982 resources to support the INTERPOL function and staff transferred in 1981. The $475,000 transfer and the $264,000 reprogramming comprise the $739,000 base. The $264,000 represents personnel and other operating costs necessary for the INTERPOL function, but excludes the dues payment derived through the transfer, and the ADP support and dues increase requested by program enhancement in 1982.

Civil Division

Last year the Committee earmarked $1,000,000 for ADP and word processing equipment for the Civil Division. What happened to those funds and how do they relate to the $346,000 request for such enhancements in the 1982 budget?

The funds which were earmarked for ADP and word processing equipment for the Civil Division were disallowed. When the Senate full com-

mittee received recommendations from the Subcommittee Chairman that eliminated the earmarking specified in the Senate report. The $346,000 request this year reflects the need to maintain the crucial momentum which was established by the Division's rental of a minimum number of word processing machines.

Civil Rights Division

What effect will the reduction of 57 positions and $1,030,000 have on the Civil Rights Division's ability to carry out the Department's statutory civil rights responsibilities?

The proposed budget (390 positions and $18,002,000) will allow the Civil Rights Division to continue enforcement activities at the approximate level of support provided in the later half of 1981. The reductions will preclude expansion of overall enforcement activities of the Division. However, the budget does provide increases of 11 positions and associated funds earmarked for the programs in the Division where it is anticipated that there will be the greatest need. To the extent that personnel resources beyond those provided for are needed for particular programs such as Special Litigation, Voting, and Coordination and Review, those needs will have to be met through reprogramming of existing resources, hiring of temporary personnel, and implementation of other cost-effective measures, including increased utilization of Civil Rights Units in U.S. Attorneys' Offices to fulfill enforcement responsiblities.

What is the Reagan Administration's position on the busing rider that led to a veto of the State, Justice, Commerce Appropriations Act last year?

This issue is currently under examination at the Department. The Department has not yet reached a decision on what position it will recommend to the President.

ANTITRUST DIVISION

STATEMENT OF RICHARD J. FAVRETTO, ACTING ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION

ACCOMPANIED BY:

RALPH JUSTUS, DEPUTY EXECUTIVE OFFICER, ANTITRUST DIVISION
KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION
CHARLES R. NEILL, CONTROLLER
WADE B. HOUK, DIRECTOR, BUDGET STAFF

BUDGET REQUEST

Senator WEICKER. Our next request is that of the Antitrust Division. The amount requested is $49,566,000, an increase of $617,000 over the 1982 base, and provides $670,000 for computer support and a program decrease of 42 positions and $53,000.

Appearing on behalf of this request is Acting Assistant Attorney General Richard J. Favretto, who is accompanied by Ralph J. Justus, Deputy Executive Officer.

Assistant Attorney General Favretto, we would be pleased to hear your statement with regard to this request.

PREPARED STATEMENT

Mr. FAVRETTO. Thank you, Mr. Chairman. I understand that a prepared statement has been submitted for the record. I will just briefly summarize the major points of that statement.

As the chairman has indicated, the Antitrust Division's budget request for fiscal year 1982 is in the amount of $49,566,000 and 897 positions. This budget request provides for the following major items:

First, uncontrollable increases in the amount of $2,518,000 are required to maintain current operating levels.

Second, the budget request provides for a program increase of $670,000 to provide for adequate computer support for cases and investigations.

Third, the budget request provides for program decreases of 42 positions and $53,000. Since the Division's actual 1981 employment level is below the 1982 request, the 42 position decrease reflects an actual reduction of only 4 work-years.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF RICHARD J. FAVRETTO

I appreciate the opportunity to appear in support of the Antitrust Division's budget request for fiscal year 1982 of $49,566,000 and 897 positions. The budget request provides for the following major items:

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1. Uncontrollable increases in the amount of $2,518,000 are required to maintain current operating levels. Major items included in this category are annualization of the 1981 pay increase and the general pricing level adjustment.

2. A program increase of $670,000 is requested to provide adequate computer support for cases and investigations relating to the reduction of oligopoly and monopoly.

3. Program decreases of 42 positions and $53,000 are reflected in this request. Since the Division's actual 1981 employment level and work-years are below the 1982 request, the employment lapse, which corresponds with the 42 position decrease, reflects only a reduction of 4 work-years.

The proposed position reductions would be allocated as follows:

	Position	Work-years	Amount
Federal appellate activity	−4	.....	.....
Judgment enforcement	−13	.....	.....
Policy analysis, legislation, and training	−12	.....	.....
Competition advocacy	−5	.....	.....
Executive direction and control	−3	.....	.....
Administrative services	−5	−4	−$53,000
Total	−42	−4	−53,000

This concludes my statement, Mr. Chairman, I will be happy to answer any questions you or other members of the subcommittee may have.

CONSUMER PROTECTION CASES

Senator WEICKER. The January budget justification indicates that 488 consumer protection cases were pending at the end of 1979, but this increased to 783 at the end of 1980—a 60.5-percent increase. Also cases referred almost doubled, from 586 in 1979 to 1,041 in 1980.

What accounts for this increase of referrals and how do you plan to deal with the backlog?

Mr. FAVRETTO. I think the increase, Mr. Chairman, deals with a cyclical increase in referrals and it does not reflect any backlog or administrative problem in the section. I would be happy to inquire further into that and provide details for the committee.

Senator WEICKER. Yes. I would like to have that.

[The information follows:]

CONSUMER PROTECTION WORKLOAD

During fiscal year 1980, significantly more cases were referred to the Antitrust Division's Consumer Affairs Section by client agencies. Approximately 274 additional seizure actions were referred by the Food and Drug Administration (FDA). In these actions the Government seizes and seeks condemnation of adulterated, misbranded or otherwise noncomplying foods, drugs or medical devices. Approximately 160 of the additional referrals involved seizure of Traceray diagnostic X-ray machines. These machines had design deficiencies such that there was a significant possibility that patients would be exposed to harmful radiation. (The equipment failed to terminate X-ray exposure after the elapse of the preset time interval.) In addition, FDA referred a number of seizure actions involving generic drugs which had been marketed without the necessary premarket approval.

During fiscal year 1980, the number of Federal Trade Commission (FTC) civil penalty cases were almost double the number that were referred in 1979 (33 cases in 1980 compared to 18 in 1979). In FTC civil penalty actions, civil penalties are sought for violations of FTC cease and desist orders, trade regulation rules or statutes prohibiting anticompetitive conduct, various deceptive marketing practices or unfair credit or debt collection practices. The Magnuson-Moss amendments to the FTC Act expanded the scope of these penalty actions to situations involving knowing violations of trade

regulation rules or knowing violations of administrative orders issued against other parties. The Fair Debt Collection Practices Act and the Equal Credit Opportunity Act may also be enforced through civil penalty actions referred by the Federal Trade Commission. Thus, there has been a broadening of activities which may be the subject of FTC civil penalty suits, and the Consumer Affairs Section is experiencing an increase in the number of such cases referred, particularly matters relating to credit practices violative of the Fair Debt Collection Practices and the Equal Credit Opportunity Acts.

In fiscal year 1980, the number of requests from the Consumer Product Safety Commission (CPSC) to institute actions seeking injuctive relief under the provisions of the CPSC Act more than doubled (21 in 1980 compared to 9 in 1979). Many of these injunctive matters related to noncomplying cellulose insulation or unsafe trash bins.

Finally, the Department of Transportation increased its investigative efforts relating to odometer fraud and referred over twice as many criminal matters to the Consumer Affairs Section relating to odometer rollbacks (26 in 1980 compared to 11 in 1979).

The rate at which cases were terminated in fiscal year 1980 did not keep pace with the number initiated primarily for two reasons: (1) during fiscal year 1979 an unusually large number of cases were terminated as a result of a concerted effort by the Consumer Affairs Section to formally remove those matters from their records that had become inactive and (2) since the cases this section is involved in are primarily civil and priority is normally given to criminal cases, these cases have been experiencing slow movement on court dockets. Although we expect the number of referrals to remain at approximately the fiscal year 1980 level, we will attempt to use available personnel to reduce the number of pending cases.

BUREAU OF COMPETITION CUTBACKS

Senator WEICKER. The Bureau of Competition in the Federal Trade Commission is cut back 99 positions out of a total of 764. Given the fact that the current budget request reflects a net decrease of 42 positions from fiscal year 1981, will the Division be able to increase its caseload to offset reductions at the Federal Trade Commission?

Mr. FAVRETTO. That is a difficult question to answer, Mr. Chairman, in the current context of the situation. I think it would depend upon the nature of the cutbacks at the FTC and the programs that are affected by those reductions.

I could conceive of some programs that were cut back where the Division either wouldn't have statutory authority to proceed in those areas or would not be prepared to devote any resources to those enforcement matters. There may be other areas, however, where some increase in Division activity would be required. It is difficult in the abstract to answer that question at the present time.

INCREASED MERGER ACTIVITY

Senator WEICKER. I will tell you why I am a little concerned about your cutback in personnel. I am generalizing. But probably because of the declining economic conditions of the past several years, through the present moment, there has been an enormous increase in merger activity. Clearly, at least in my opinion, the smaller companies, by virtue of the fact that they don't have access to capital or can't pay the going rate to acquire capital, are having to look down the merger route. I was wondering, how does that relate to the activities of your Division, No. 1. I believe I am correct about this increased merger activity. I pick up newspapers and I have never seen mergers like I have seen in the past several months. Anyway, does this draw the attention of the Division? If it does, are you going to pursue it?

Mr. FAVRETTO. I think there are a few observations I might have on that, Mr. Chairman. First, I think the decrease in positions does not reflect a decrease in current work-years or man-years of work. We are at a level now which is below the level requested, so we will not have a decrease in actual work produced within the Division.

The merger activity to which you refer, specifically, that I am aware of, is the recent accounts that have appeared in the papers involving several large mineral company acquisitions.

Senator WEICKER. That is true. But merger activity in general, because of these unsettled economic conditions, which has been going on for about a year now.

Mr. FAVRETTO. Assuming that it is occurring and it does continue to occur, the budget request I think is adequate to handle that kind of activity and that kind of investigative work. I don't perceive any difficulty with the existing request and existing resources handling that burden on our efforts. That reflects a judgment, Senator, that we are able to handle an increase in work, an increase in activity. If that comes down the road, I think we will be able to do it.

Senator WEICKER. The country is very sensitive. No. 1, I am not so sure I approve in general with all the merger activity. But be that as it may, the country, as I say, is especially sensitive to this area of energy. We identified one of the areas we have been seeing in the newspapers. I think the country feels that there is already too much concentrated in the hands of too few. What I have been reading accelerates that process instead of diffusing it.

Mr. FAVRETTO. Mergers of this size would ordinarily be looked at by the FTC or Department of Justice. They are of such significance in terms of absolute size that they would be studied. Whether or not they raise competitive problems that could be reached under existing law and would form the basis of some challenge under section 7 of the Clayton Act would have to await the conclusion of that study. It is difficult at this point to make a firm prediction on whether some increase in resources would be required to deal with a merger wave, if that wave were to occur. I think where we stand now we are adequately staffed and have adequate resources to deal with what can be reasonably anticipated in that area.

RESOURCES APPLIED TO A.T. & T. AND IBM CASES

Senator WEICKER. For some time we have been hearing about the settlement of the A.T. & T. case. What is the status of that?

Mr. FAVRETTO. Mr. Chairman, the settlement discussions have terminated. The case is in trial at this point. Whether they will be resumed and under what circumstances remains uncertain.

Senator WEICKER. In the IBM case?

Mr. FAVRETTO. The IBM case is approaching a conclusion, and the parties and the judge are very hopeful of being able to bring that trial to a conclusion within the next 30 to 60 days.

Senator WEICKER. What percentage of resources, in terms of manpower, are devoted to just those two cases on your part?

Mr. FAVRETTO. Currently we have I believe 13 attorneys assigned full-time to the IBM litigation. I am not entirely sure what the number of

support personnel would be. On A.T. & T., we currently have 20 attorneys assigned full-time. That number fluctuates from time to time because we make temporary assignments and we shift resources around when they are needed on a particular matter. In the A.T. & T. case, for example, the stipulation process and the pretrial proceedings imposed by Judge Greene in that case in order to facilitate the trial of that matter have required us from time to time to double the number of attorneys on that case at any one time. But in terms of full-time employees, full-time professional employees, legal professional employees, we have 20 attorneys on A.T. & T. and 13 on IBM.

Senator WEICKER. That is 33. How many do you have altogether in that area of activity? I don't mean to include secretaries and other support staff, how does this compare to other professional staff?

Mr. FAVRETTO. I think that commitment, Mr. Chairman, while I don't have the specific number, would represent somewhere over 10 percent of our commitment in terms of resources in that area of enforcement.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. Other questions will be submitted for the record.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR HOLLINGS

Question. Early on in his efforts to reduce the budget, OMB Director Stockman proposed the elimination of the Bureau of Competition of the Federal Trade Commission. That effort was aborted but the FTC is being compelled to eliminate their regional offices. What will be the general themes of the Reagan administration's antitrust policy?

Answer. I expect that during the current administration you will see continued enforcement emphasis on horizontal price-fixing violations and continued concern with the horizontal effects of mergers.

Question. How is it planned to absorb the workload of the FTC regional offices?

Answer. At the current time, in the absence of any final decision concerning the nature and extent of the future role of the FTC's regional offices, it would be premature to formulate specific proposals for dealing with this issue. In the event that some curtailment in the enforcemnt activities of those offices is eventually decided upon, the Division would be prepared to make adjustments as deemed necessary and appropriate at that time.

SUBCOMMITTEE RECESS

Senator WEICKER. The subcommittee will recess until 9:30 tomorrow morning. Thank you very much, gentlemen.

Mr. ROONEY. Thank you, Mr. Chairman.

[Whereupon, at 11:33 a.m., Tuesday, March 17, the subcommittee was recessed, to reconvene at 9:30 a.m.. Wednesday, March 18.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

WEDNESDAY, MARCH 18, 1980

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room S-146, the Capitol, Hon. Lowell P. Weicker, Jr. (chairman) presiding.

Present: Senators Weicker and Bumpers.

DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

STATEMENT OF WILLIAM H. WEBSTER, DIRECTOR

ACCOMPANIED BY:

LEE COLWELL, EXECUTIVE ASSISTANT DIRECTOR—ADMINISTRATION
OLIVER B. REVELL, ASSISTANT DIRECTOR, ADMINISTRATIVE SERVICES DIVISION
L. CLYDE GROOVER, JR., INSPECTOR—DEPUTY ASSISTANT DIRECTOR, FINANCIAL MANAGEMENT BRANCH, ADMINISTRATIVE SERVICE DIVISION
KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION
CHARLES R. NEILL, CONTROLLER
WADE B. HOUK, DIRECTOR, BUDGET STAFF

BUDGET REQUEST

Senator WEICKER. The first request this morning is that of the Federal Bureau of Investigation, requesting $739,013,000, an increase of $56,730,000 over the 1982 base. The changes include overall increases for criminal, security, and other investigations, small increases for State and local assistance activity, and decreases for terrorist and domestic programs.

Appearing on behalf of this request is Director William H. Webster, accompanied by Lee Colwell, Executive Assistant Director—Administration; Oliver B. Revell, Assistant Director Administrative Services Division; L. Clyde Groover, Jr., Inspector—Deputy Assistant Director, Financial Management Branch; Kevin D. Rooney, Assistant Attorney General for Administration; Charles R. Neill, Controller; and Wade B. Houk, Director, Budget Staff.

We will be pleased to hear your statement with regard to this request. I want to also say even though there has been a change of administration, in talks I have had with various individuals, everybody is very pleased—indeed, very proud of the job you have done at the Bureau since you have become Director.

I think you finally have brought order out of what, in effect, was chaos, and have brought prestige back to this Bureau, which is of great importance to all Americans.

OPENING STATEMENT

Mr. WEBSTER. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am pleased to appear before you today in support of the FBI's fiscal year 1982 appropriation request. Last year was a good year for the FBI. We had successful investigations in the foreign counterintelligence area, organized crime, public corruption, and violent crime including terrorism.

To continue these and begin other initiatives, we are requesting $739,013,000 for fiscal year 1982. This represents an increase of 8.3 percent, or $56,730,000 above the amount required for fiscal 1981. Our request will provide for 19,421 permanent positions, an increase of 115 positions over our 1981 level.

Four of our five budget activities deserve special mention. Our principal activity, criminal, security, and other investigations, consumes over 60 percent of our appropriation request. A net increase of 51 positions is being requested for these field investigative programs to address current workload demands.

Undercover operations will be funded at a level of $7,750,000 in fiscal year 1982, an increase of $2,959,000 over the 1981 level. These operations have proven to be highly productive and represent an efficient use of searce resources over the past few years.

The fiscal year 1982 request will provide for a significant increase in our automatic data processing and telecommunications effort within the investigative support activity. This effort will mark the beginning of automation of our labor intensive field office case management, recordskeeping, and administrative functions. We are requesting 2-year funding authority for $5,000,000 to insure a systematic, uninterrupted procurement process for this project. Other increases are requested for internal FBI training and for the Federal portion of the FBI laboratory. A total of 45 additional positions are requested in the investigative support activity.

For fiscal year 1982, we are requesting an addition of 10 positions above the fiscal year 1981 level for the State and local assistance activity. This increase will aid in our fingerprint identification, general law enforcement training, and non-Federal forensic services programs.

Nine additional positions are required above the fiscal year 1981 level in the program direction activity. These positions will strengthen our evaluation, internal inspection, and congressional affairs efforts.

These are the highlights of our 1982 request. As I mentioned previously, our accomplishments have been many. Our organized crime and white-collar crime programs have resulted in quality convictions in highly complex investigative matters.

During fiscal year 1980, 597 convictions were recorded in organized crime matters, 264 of these in the high impact areas such as arson-for-profit, gangland slayings, and pornography. In one case, in the white-collar crime area of energy fraud, an oil company was convicted in Oklahoma for violation of the racketeer influenced and corrupt organizations statute resulting in the forfeiture of a multi-million dollar office building.

The arrest in Florida of Joseph Paul Franklin and his subsequent conviction in Utah for the killing of two black men in Salt Lake City were the result of a nationwide FBI investigation. Franklin is a suspect in other continuing homicide and civil rights investigations across the country.

Our adaptation of laser technology to the science of fingerprint identification has opened new investigative opportunities. Our organized crime information system has been progressing well and will be operational during the 1982 fiscal year.

Our forensic laboratory has developed a positive means to determine the sex of an individual from blood stains. Also, we continue to make progress in the recruitment and employment of minorities and females.

PREPARED STATEMENT

Mr. Chairman, I have a more detailed formal statement with exhibits which I will offer for inclusion in the record at this time. My associates and I will be glad to answer any questions you might have.

Senator WEICKER. Thank you very much. Your formal statement will be included in the record at this point.

[The statement follows:]

STATEMENT OF WILLIAM H. WEBSTER

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I WELCOME THIS OPPORTUNITY TO APPEAR BEFORE YOU IN SUPPORT OF THE FBI'S 1982 APPROPRIATION REQUEST. I WILL SUPPLY CHARTS AND NARRATIVE MATERIAL WITH MY STATEMENT TO AID IN YOUR ANALYSIS AND UNDERSTANDING OF THIS REQUEST.

THE APPROPRIATION REQUEST FOR FISCAL YEAR 1982 IS $739,013,000. THIS SUBMISSION IS $56,730,000, OR A LITTLE MORE THAN EIGHT PERCENT, OVER THE AMOUNT REQUIRED FOR FISCAL YEAR 1981. THERE ARE NET PROGRAM INCREASES OF $28,577,000, UNCONTROLLABLE COST INCREASES OF $30,301,000, OTHER ADJUSTMENTS AMOUNTING TO $1,734,000 AND NON-RECURRING COST DECREASES OF $3,882,000. IT WILL PROVIDE FOR 19,421 POSITIONS AND 18,956 WORK-YEARS, OR 115 POSITIONS AND 444 WORK-YEARS ABOVE THE ADJUSTED TOTALS FOR 1981. THIS INVOLVES AN INCREASE OF 56 SPECIAL AGENT WORK-YEARS AND 388 SUPPORT WORK-YEARS. INCLUDED IN THIS INCREASE IS THE RESTORATION OF 407 SUPPORT WORK-YEARS WHICH, DUE TO THE EFFECTS OF THE HIRING FREEZE, HAVE BEEN CUT FROM THE FINGERPRINT IDENTIFICATION AND RECORDS MANAGEMENT PROGRAMS IN FISCAL YEARS 1981. THE FOLLOWING EXHIBITS DEPICT THE FUNDING REQUESTED FOR FISCAL YEAR 1982 AND COMPARISONS OF THIS REQUEST WITH THOSE OF PREVIOUS YEARS:

EXHIBIT No. 1

COMPARISON: FUNDS AND PERSONNEL REQUIRED
FISCAL YEAR 1981 VS. 1982

	FISCAL YEAR 1981	FISCAL YEAR 1982	INCREASE (+) DECREASE (-)	
PERSONNEL (FULL-YEAR EMPLOYEES):				
FBI Headquarters:				
Special Agents ...	757	786	(+)	29
Support Personnel	6,300	6,670	(+)	370
Total (FBIHQ) ...	7,057	7,456	(+)	399
Field:				
Special Agents ...	7,074	7,101	(+)	27
Support Personnel	4,381	4,399	(+)	18
Total (Field) ...	11,455	11,500	(+)	45
Total:				
Special Agents ...	7,831	7,887	(+)	56
Support Personnel	10,681	11,069	(+)	388
Total (FBIHQ) and Field)	18,512	18,956	(+)	444
FUNDS:				
PERSONNEL COMPENSATION	$468,882,000	$475,717,000	(+)	$6,835,000

	FISCAL YEAR 1981	FISCAL YEAR 1982	INCREASE (+) DECREASE (-)
OTHER EXPENSES:			
Personnel Benefits	$ 55,104,000	$ 57,235,000	(+) $2,131,000
Travel and Transportation of Persons	14,050,000	18,052,000	(+) 4,002,000
Transportation of Things	3,100,000	3,300,000	(+) 200,000
Standard Level User Charges (SLUC)....	36,096,000	46,033,000	(+) 9,937,000
Communications, Utilities, and other Rent.....	30,686,000	36,756,000	(+) 6,070,000
Printing and Reproduction	1,782,000	1,946,000	(+) 164,000
Other Services	22,149,000	31,105,000	(+) 8,956,000
Supplies and Materials	22,946,000	25,742,000	(+) 2,796,000
Equipment	27,306,000	42,947,000	(+) 15,641,000
Insurance Claims and Indemnities ..	112,000	110,000	(-) 2,000
Unvouchered	70,000	70,000	---
SUBTOTAL, OTHER EXPENSES.....	$213,401,000	$263,296,000	(+)$48,895,000
TOTAL, ALL EXPENSES.	$682,283,000	$739,013,000	(+)$56,730,000

EXHIBIT No. 2

SUMMARY OF CHANGES, FISCAL YEAR 1982

Uncontrollable increases:	
1. Annualization of 1981 pay increase	$3,369,000
2. Annualization of positions approved in 1981	325,000
3. Within-grade step increases	4,447,000
4. Wage-board salary increases	351,000
5. Health benefits costs	1,156,000
6. Federal Employees' Compensation Act (FECA)	643,000
7. Standard Level User Charges (SLUC)	9,854,000
8. General Services Administration (GSA) recurring reimbursable service	1,294,000
9. Federal Telecommunications System (FTS)	719,000
10. Travel costs — airfare increases	980,000
11. Printing Costs for the Federal Register and Code of Regulations	2,000
12. General pricing level adjustments	6,397,000
13. Communications rate increase	764,000
Total uncontrollable increases	$30,301,000
Decreases (automatic non-policy):	
1. Non-recurring costs for word-processing equipment	-$510,000
2. Non-recurring costs for Intelligence Information System	-400,000
3. Non-recurring costs for Automated Identification Division (AIDS) developmental effort	-475,000
4. Proposed reductions below current level	-2,497,000
Total decreases (automatic non-policy)	-$3,882,000

Program changes (decision unit):

1.	Organized crime	$ 1,423,000
2.	White-collar crime	1,122,000
3.	Fugitive	-1,127,000
4.	Terrorism	-286,000
5.	Other field programs	4,770,000
6.	Coordination of investigations	-504,000
7.	Training	1,363,000
8.	Forensic services - Federal	2,644,000
9.	ADP and telecommunications	9,012,000
10.	Records Management	982,000
11.	Technical field support and equipment	6,835,000
12.	General law enforcement training	624,000
13.	Forensic services - non-Federal	391,000
14.	Fingerprint identification	1,275,000
15.	Administrative Services	53,000
	Total program changes	$28,577,000
	Other adjustments	$ 1,734,000

Overview:

Total uncontrollable increases	$30,301,000
Total decreases (automatic non-policy)	- 3,882,000
Total program changes	28,577,000
Other adjustments	1,734,000
Overall increase for 1982	$56,730,000

EXHIBIT No. 3

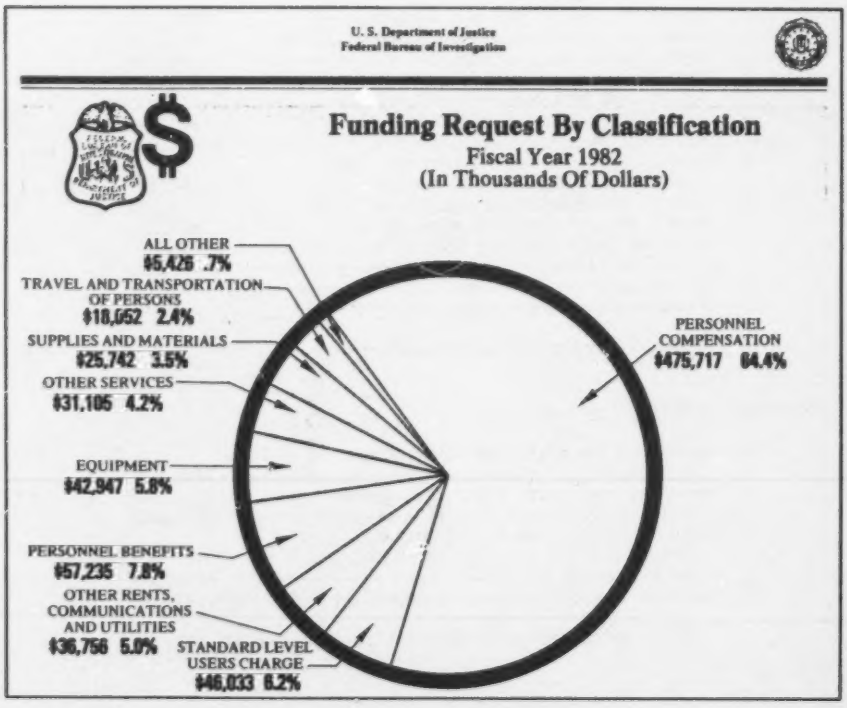
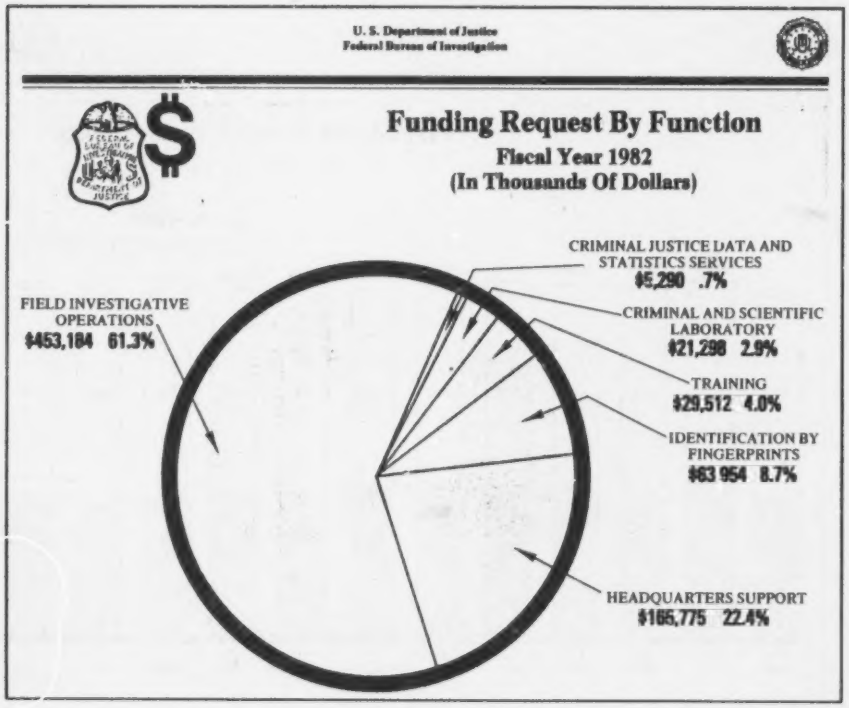


EXHIBIT No. 4



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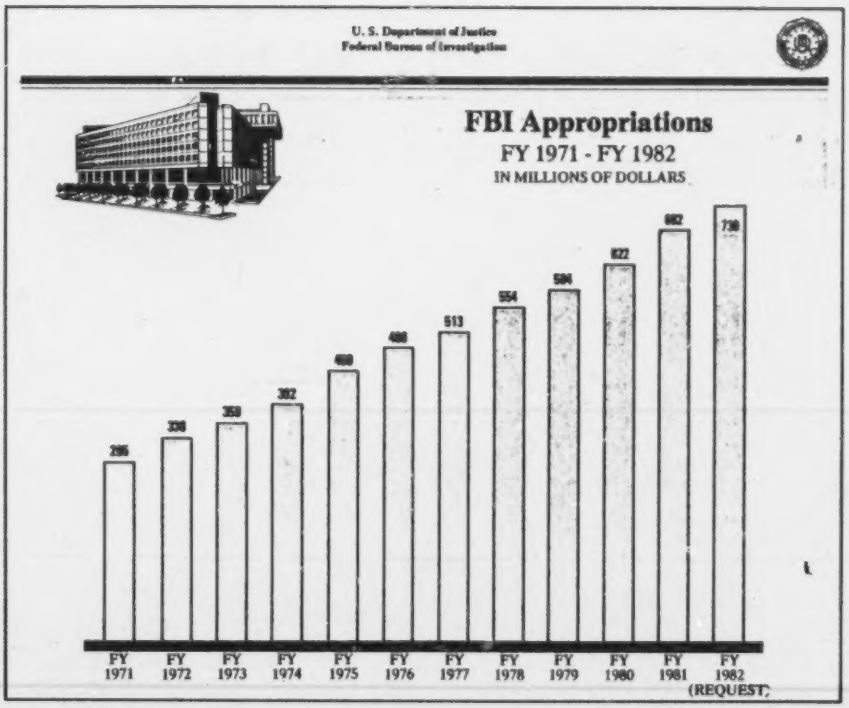
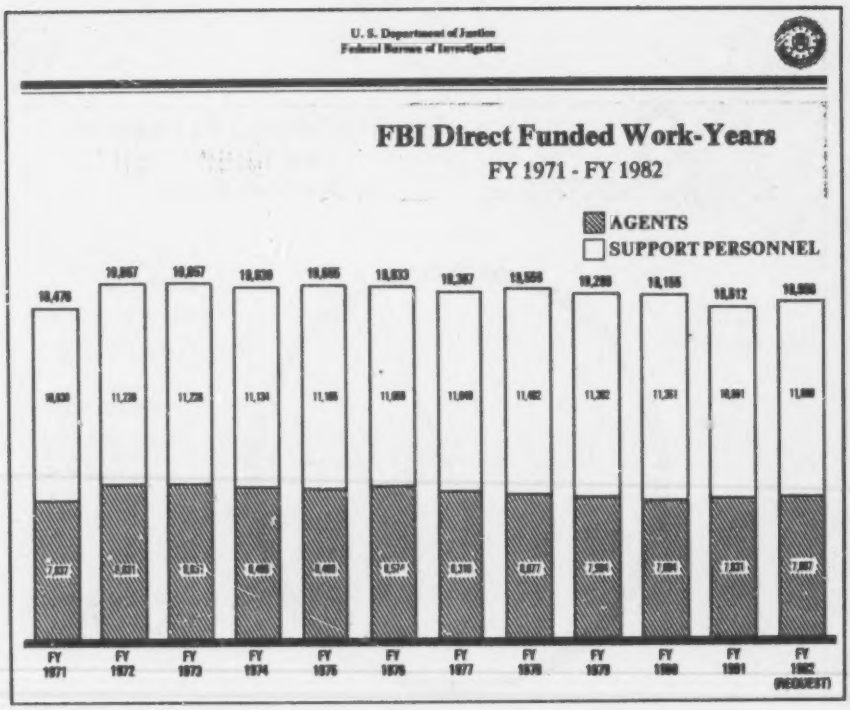


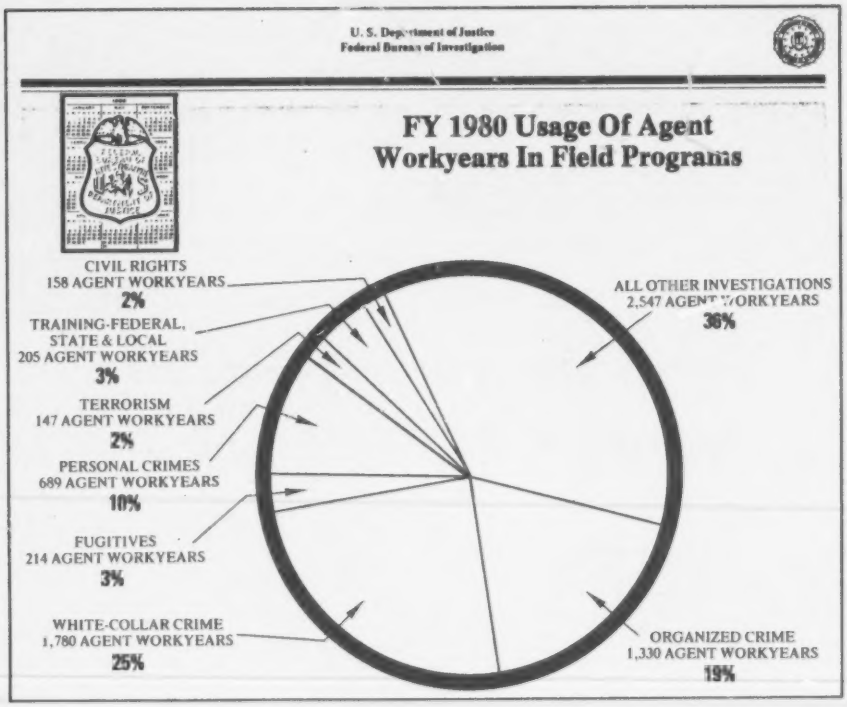
EXHIBIT No. 6



INVESTIGATIVE PROGRAMS

THE FBI'S PRINCIPAL BUDGET ACTIVITY, CRIMINAL, SECURITY, AND OTHER INVESTIGATIONS, IS DIVIDED INTO EIGHT GENERAL FIELD PROGRAM AREAS. THESE AREAS AND THE FISCAL YEAR 1980 UTILIZATION OF AGENT WORK-YEARS THEREIN ARE SHOWN IN THE FOLLOWING EXHIBIT:

EXHIBIT No. 7



EQUAL EMPLOYMENT OPPORTUNITY WITHIN THE FBI

WHEN I BECAME DIRECTOR OF THE FBI I MADE A PERSONAL COMMITMENT TO CONTINUE THE EFFORTS TO INCREASE THE REPRESENTATION OF MINORITIES AND WOMEN IN THE BUREAU, WITH PARTICULAR REGARD TO THE SPECIAL AGENT POSITION. IN THE THREE YEARS SINCE I WAS APPOINTED, A SIGNIFICANT NUMBER OF MINORITY AND FEMALE SPECIAL AGENTS HAVE BEEN SELECTED FOR NEW AGENTS' TRAINING, ALL OF WHOM MEET OUR STANDARD QUALIFICATIONS. THIS IS BEING ACCOMPLISHED BY TARGETING RECRUITMENT EFFORTS AT ALL LOGICAL SOURCES. FOLLOWING IS AN EXHIBIT WHICH CONTAINS INFORMATION ON OUR EQUAL EMPLOYMENT OPPORTUNITY ACCOMPLISHMENTS:

EXHIBIT No. 8

RECRUITMENT OF MINORITIES AND WOMEN

Minority and Women Special Agents as of 2/28/81

				Since 2/28/78	
	Field	FBIHQ	Total	Gain or Loss	Percentage Increase
Black	217	21	238	+94	65.3%
Hispanic	233	10	243	+88	56.8%
American Indian	23	0	23	+8	53.3%
Asian American	47	5	52	+18	52.9%
Women	343	6	349	+255	271.3%

Percentage of Minority and Women Special Agents as of 2/28/81

Group	Number of Males	Percent of Total	Number of Females	Percent of Total	Total by Group	Percent of Total
White	6,893	93.0	315	90.3	7,208	92.8
Black	219	2.9	19	5.4	238	3.1
Hispanic	232	3.1	11	3.1	243	3.1
American Indian	21	.3	2	.6	23	.3
Asian American	50	.7	2	.6	52	.7
TOTAL	7,415	100.0	349	100.0	7,764	100.0
All Minorities	522	7.0%	34	9.7%	556	7.2%

Percentage of Minority and Women Support Personnel

	Total	Percent
Support Personnel	11,049	100.0
Male	3,351	30.3
Female	7,698	69.7
Black	3,302	29.9
Hispanic	242	2.2
American Indian	18	.2
Asian American	108	1.0
All Minority	3,670	33.3

ORGANIZATION OF THE FBI

THE FBI IS A FIELD-ORIENTED ORGANIZATION IN WHICH TEN DIVISIONS AT FBI HEADQUARTERS PROVIDE PROGRAM DIRECTION, SUPPORT SERVICES, AND COORDINATION TO 59 FIELD OFFICES, 439 RESIDENT AGENCIES, AND 12 FOREIGN LIAISON POSTS. EACH FIELD OFFICE HAS AN AGENT IN CHARGE, WHO IS RESPONSIBLE FOR DEPLOYMENT OF PERSONNEL SO AS TO HANDLE EFFECTIVELY ALL FBI MATTERS WITHIN ITS GEOGRAPHICAL TERRITORY. AGENTS AT OUR LIAISON POSTS ABROAD ACT AS A LIAISON IN CONNECTION WITH CRIMINAL AND SECURITY MATTERS WITHIN THE FBI'S JURISDICTION. OF THE TOTAL AMOUNT REQUESTED BY THE FBI FOR 1982, 61.3 PERCENT, OR $453,184,000, IS FOR FIELD INVESTIGATIVE OPERATIONS. THIS DOES NOT INCLUDE HEADQUARTERS SUPPORT WHICH CONTAINS ADP OPERATIONS, INVESTIGATIVE DIRECTION AND TECHNICAL FIELD SUPPORT AND EQUIPMENT FUNDING, ALL OF WHICH SUPPORT BOTH FIELD AND HEADQUARTERS ACTIVITIES. THERE ARE INCREASES IN THE FIELD FOR OUR TOP THREE PRIORITY PROGRAMS, WHITE- COLLAR CRIME, ORGANIZED CRIME AND FOREIGN COUNTERINTELLIGENCE. EXHIBITS FOLLOW THAT SHOW THE ORGANIZATION OF FBI HEADQUARTERS, THE LOCATION OF FIELD OFFICES AND FOREIGN LIAISON POSTS, AND ADDITIONAL INFORMATION CONCERNING PERSONNEL ASSIGNED TO THE FOREIGN POSTS:

EXHIBIT No. 9

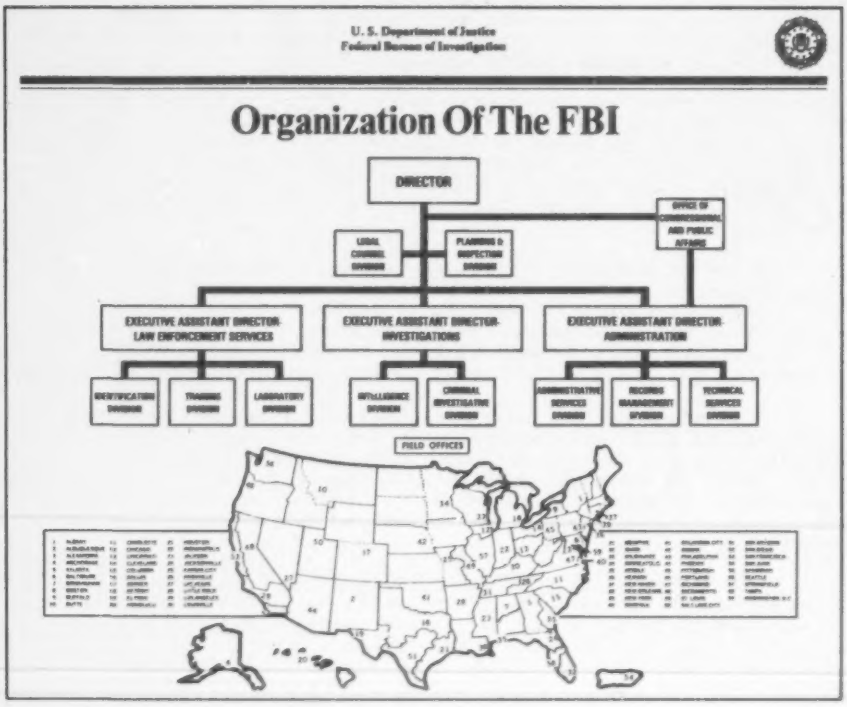


EXHIBIT No. 10

FOREIGN LIAISON

LEGAL ATTACHES

This program is designed to provide a continuing and prompt exchange of information and assistance with foreign law enforcement and security agencies in order to insure that the responsibilites of the FBI in the applicant, criminal, domestic security, foreign counterintelligence, and international terrorist fields are met. By way of reciprocation, the FBI will assist cooperative foreign agencies with their legitimate and lawful investigative interests in the United States.

For over 35 years the FBI has maintained posts abroad known as legal attache offices. There are currently 12 such posts covering more than 80 countries, enabling the 59 field offices and FBI Headquarters to receive a constant and prompt exchange of criminal and security type information. They develop and maintain close liaison with relevant and duly authorized law enforcement and security/intelligence agencies of the countries covered to insure that the domestic responsibilities of the FBI are met in a timely and professional manner.

The program provides the liaison necessary in order to locate and/or effect the return of United States fugitives; locate and return stolen property, including vehicles, heavy equipment, airplanes, and art objects; and to enable the FBI to fulfill its statutorily mandated responsibilities in the applicant, criminal, foreign counterintelligence, and domestic and international terrorism fields.

Prior to posting FBI personnel in foreign countries, the concurrence of the United States Ambassador and the Foreign Ministry of the host government must be obtained. The State Department provides office space and other administrative support for the program on a reimbursable basis.

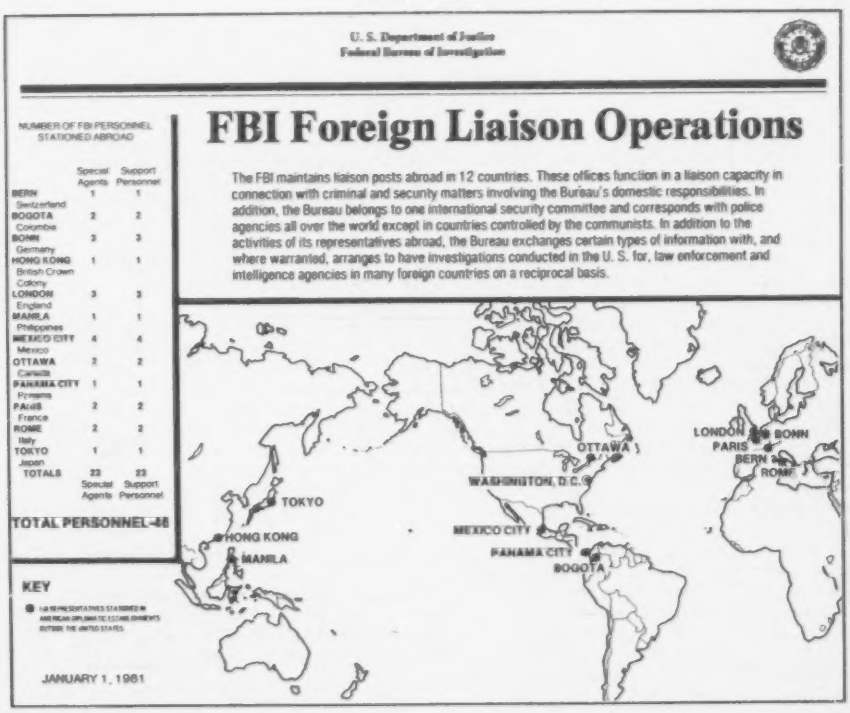
Budgetary and other constraints in 1980 resulted in the closing of the Buenos Aires post. This affected the ability of the FBI to maintain vital and timely personal liaison with foreign law enforcement agencies in that area. The current funding level will enable the FBI to open a new legal attache post in Montevideo, bringing the total number of posts to 13 in 1982.

One of the more significant recent achievements within the Legal Attache program involved the arrest of an armed robber who stole $3.5 million in jewelry in London. Through close coordination and prompt exchange of information with British officials in London, Legal Attache, London was instrumental in locating the robber in the United States.

Another case of great intelligence value involved the efforts of the legal attaches in Europe who obtained information from a Western European country identifying an illegal agent who moved to the United States. He was subsequently arrested on a business trip to Europe and admitted to the Legal Attache that he was an officer in a hostile intelligence service.

It is apparent that with criminals and intelligence officers alike their targets are international in scope and that worldwide communication facilities are used regularly in the furtherance of criminal and intelligence activities. Through effective liaison, it has been possible to interdict some of these activities and prosecute many cases thought by violators to be protected by international boundaries.

EXHIBIT No. 11


U. S. Department of Justice
Federal Bureau of Investigation
FBI Foreign Liaison Operations
The FBI maintains liaison posts abroad in 12 countries. These offices function in a liaison capacity in connection with criminal and security matters involving the Bureau's domestic responsibilities. In addition, the Bureau belongs to one international security committee and corresponds with police agencies all over the world except in countries controlled by the communists. In addition to the activities of its representatives abroad, the Bureau exchanges certain types of information with, and where warranted, arranges to have investigations conducted in the U. S. for, law enforcement and intelligence agencies in many foreign countries on a reciprocal basis.
NUMBER OF FBI PERSONNEL STATIONED ABROAD
Special Agents
Support Personnel
BERN Switzerland 1 1
BOGOTA Colombia 2 2
BONN Germany 3 3
HONG KONG British Crown Colony 1 1
LONDON England 3 3
MANILA Philippines 1 1
MEXICO CITY Mexico 4 4
OTTAWA Canada 2 2
PANAMA CITY Panama 1 1
PARIS France 2 2
ROME Italy 2 2
TOKYO Japan 1 1
TOTALS 23 Special Agents 23 Support Personnel
TOTAL PERSONNEL-46
KEY
JANUARY 1, 1981
OTTAWA
WASHINGTON, D.C.
LONDON
BONN
PARIS
BERN
ROME
TOKYO
HONG KONG
MANILA
MEXICO CITY
PANAMA CITY
BOGOTA

ORGANIZED CRIME

ONE OF THE FBI'S TOP PRIORITIES IS THE INVESTIGATION OF ORGANIZED CRIME. IN 1982, EFFORTS IN THIS AREA WILL REQUIRE $83,832,000 AND 2,107 POSITIONS, REPRESENTING A PROGRAM INCREASE OF $1,423,000. THESE FUNDS WILL ENHANCE FBI UNDERCOVER OPERATIONS, ORGANIZED CRIME INFORMANTS AND AIRCRAFT SURVEILLANCE.

DURING THE PAST FISCAL YEAR, 19 PERCENT OF THE FIELD AGENT TIME WAS SPENT ON ORGANIZED CRIME INVESTIGATIONS.

WHITE-COLLAR CRIME

WHITE-COLLAR CRIME INVESTIGATIONS CONSTITUTE ANOTHER TOP PRIORITY OF THE FBI. AS IN ORGANIZED CRIME, WHITE-COLLAR CRIME SOMETIMES INVOLVES PUBLIC CORRUPTION. A TOTAL OF $114,896,000 AND 2,992 POSITIONS WILL BE NEEDED FOR WHITE-COLLAR CRIME IN FISCAL YEAR 1982. THIS REPRESENTS AN INCREASE OF $1,122,000 OVER THE PREVIOUS YEAR, AND WILL RESULT IN MORE EXTENSIVE USE OF UNDERCOVER ACTIVITIES AND AIRCRAFT SURVEILLANCE. DURING FISCAL YEAR 1980, THE FBI EXPENDED 25 PERCENT OF ITS FIELD AGENT WORK-YEARS ON WHITE-COLLAR CRIME INVESTIGATIONS. ORGANIZED CRIME AND WHITE-COLLAR CRIME MATTERS ARE DISCUSSED IN THE FOLLOWING EXHIBITS:

Exhibit No. 12

ORGANIZED CRIME INVESTIGATIONS

An organized crime investigation is targeted against a member or members of an organized crime group involving violation of Federal statutes(s) specifically aimed at racketeering activities. For the purpose of managing these investigations, an organized crime group is defined as any group having some manner of formalized structure whose primary objective is to obtain money through illegal activities and maintains its position through the use of violence or threat of violence, corrupt public officials, graft and extortion, and has a signficant adverse impact on the people in its locale or region, or the country as a whole. The thrust of the organized crime program is targeted against individuals comprising the major organized crime groups across the country.

An increase in funding for this program for fiscal year 1982 will provide for an imaginative, responsive, and effective investigative approach directed against the organized criminal element at a sustained level. The increase will provide for expanded coverage of already existing programs and permit continue penetration into areas deserving additional investigative attention based on program review. Among those targeted for expansion are hoodlum infiltration of legitimate business; labor racketeering; corruption; arson-for-profit; loansharking; and pornographic operations which are national in scope, involve major organized crime figures, or which deal in the use of children. The increase in funding will also permit the FBI to continue to utilize resources in support of joint FBI/Drug Enforcement Administration special (informal) task forces where utilization of these task forces best serve the interest of the Department of Justice. Additionally, the increase will enable the FBI to expand its assistance to local, state, and other Federal agencies engaged in the fight against illegal narcotics and drugs. This will be

accomplished through the development and dissemination of narcotics information stemming from organized crime activities being investigated by the FBI.

Implementation of a system to enhance organized crime intelligence-gathering capabilities has begun through the use of a computerized data processing network known as the Organized Crime Information System (OCIS). The primary objective of the system is to improve the FBI's ability to collect, analyze, and use investigative data in furtherance of the successful prosecution of organized crime subjects. Increased funding dedicated to the organized crime program will enable implementation of this system at additional field divisions during fiscal year 1982 and provide for resources in support of personnel to operate this system.

In addition to maintaining active investigative programs targeted at traditional racketeering activities of gambling, corruption, and loansharking, the FBI has continued with a number of programs from the past year, aimed specifically at combating labor-racketeering, hoodlum infiltration of business, arson-for-profit, narcotics trafficking, and major pornography operations. The cumulative goal of these programs is to interdict systematically and progressively the sphere of organized crime influence and to reduce its impact on American society.

The impact of organized crime

While not inclusive, the following are some of the major areas wherein organized crime impacts on society as a whole:

Corruption undermines the country's civic, judiciary, legislative, and law enforcement bodies, depriving citizens of the protection and the governmental functions to which they are entitled.

Businessmen find themselves in the position of having to compete with gangsters who pour money from their illicit enterprises into legitimate industry and use these untaxed funds to undercut the operations of competitors not enjoying this unfair advantage.

The tax base itself is eroded by significant amounts of dollars being siphoned from the economy without any commensurate return to local, state, or Federal governments.

Gambling and narcotics addicts commit a large amount of street crimes currently plaguing the country as they try to supply the needs of their illegal habits.

Labor-racketeering and cartage thefts drive up insurance rates, increase transportation costs, and add substantially to the prices consumers pay for their merchandise.

The drug problem

At the request of Congress and the White House, particular stress is placed on the need for close cooperation in the field of drug investigations. Although the DEA has primary jurisdiction over narcotics offenses, the FBI is charged with the responsibility of assisting DEA through the exchange of data and other supportive activities. This role is provided in three major areas:

1. The debriefing of FBI sources, subjects, suspects, and informants for drug-related data and the dissemination of this information to the appropriate investigative body.

2. The provision of investigative support, such as joint operations and the apprehension of DEA fugitives.

3. The provision of certain centralized FBI services, such as fingerprint identification, arrest records, laboratory examinations, name checks, and access to the National Crime Information Center (NCIC) on-line files.

The FBI is currently involved with DEA in a number of "joint investigations" throughout the United States which involve not only FBI substantive violations, but also DEA narcotics violations.

The infiltration problem

Hoodlum infiltration of labor unions is one of the top priority areas targeted for investigation by the FBI. The primary objective of this program is to identify the organized criminal and corrupt elements involved in the labor field and to successfully prosecute those individuals connected with racketeering activities. Investigations under this program are targeted at uncovering such activities as payoffs and kickbacks resulting from the awarding of contracts or the conduct of day-to-day union activities; the embezzlement of union funds; instances of extortion; and the mishandling of union loans.

Likewise, hoodlum infiltration of legitimate business is a priority investigative area targeted by the FBI. To date, investigations have revealed allegations that such investments not only provide the hoodlums with "show money" for tax purposes, but also make it possible for those involved to "launder" illegal funds, set up front corporations to cover their criminal operations, and to profitably bankrupt companies when they no longer have any use for them.

In most instances, organized crime's movement into business is done quietly. Seldom do mobsters' names appear on corporate records, and fear of reprisal makes complaining victims scarce. Such conditions require current and accurate intelligence data, which can only be obtained through a network of well-placed informants. The FBI has a program for developing informants, and their information has allowed agents to remain cognizant of organized criminal activity in the business community and thus take appropriate action.

Investigative techniques

The FBI is refining and intensifying its use of a number of highly innovative investigative techniques in the fight against organized crime. Included among these are:

1. Undercover agents and storefront operations designed to ferret out large-scale pornographic operations, narcotics trafficking, infiltration of legitimate business, and extensive labor-racketeering activities.

2. Judicially approved electronic surveillance installations and consensual recording devices (both of which are most effective against loansharking and corruption).

3. The assignment of experienced Special Agent Accountants to the review and analysis of labor union records, records of financial institutions, and records of businesses in which there is probable cause to believe a crime has been committed. (This also embraces expanded use of computers to assist in the correlation and review of document examinations of a voluminous nature).

4. Informants specifically selected and targeted to penetrate the upper echelons of the organized underworld.

5. Miscellaneous techniques, such as aerial surveillance and hypnotism of willing witnesses (particularly helpful in gangland murder cases).

The results

Since the enactment of the first three major organized crime statutes in 1961, numerous organized crime members and associates have been convicted in FBI cases. Included among these individuals were top-ranking traditional organized crime functionaries in New York City and Buffalo, New York; Philadelphia and Pittston, Pennsylvania; Detroit; Chicago; St. Louis; Kansas City; Denver; Los Angeles; in addition to the New Jersey and New England areas. During fiscal year 1980, 597 individuals were convicted as a result of investigative activity targeted against the organized criminal element by the FBI. Of this figure, 41 were either associates or members of the largest organized crime group operating in this country. In addition, $21,985,001 in fines, savings, and recoveries were attributed to this priority program area.

The increase for Fiscal year 1982 of $1,423,000 in the Organized Crime Program will provide additional resources for undercover operations relative to high impact undercover activity not previously pursued because of lack of funds. ($500,000)

This increased allocation will also support maintenance and development of organized crime informants necessary for investigation of organized criminal activity. ($300,000)

Finally, this funding includes additional resources for aircraft surveillance. As the FBI's investigations become more complex and involve greater numbers of subjects, operations, and locations, effective surveillance is a critical requirement. ($623,000)

EXHIBIT No. 13

AGENT TIME SPENT BY MAJOR CATEGORY OF ORGANIZED CRIME INVESTIGATIONS: FY 1980

Major Category	Agent Work-Years (Includes Field Supervisors)	Percent (%) of Program	Percent (%) of Total Field Agent Time
Anti-Racketeering	71	5.3%	1.0%
Extortionate Credit Transactions	66	5.0%	.9%
RICO - Traditional Groups	724	54.5%	10.2%
RICO - Non-Traditional Groups	216	16.2%	3.1%
Hobbs Act-Corruption of Public Officials	58	4.4%	.8%
Informants	62	4.6%	.9%
All others	133	10.0%	1.9%
Total Organized Crime Program	1,330	100.0%	18.8%

* For future reference it should be noted that at the outset of FY 1980, several RICO classifications were transferred to the White-Collar Crime, General Property Crimes, and Personal Crimes Programs from Organized Crime. These particular classifications consumed 275 agent work-years during FY 1979, representing 18.5% of the Organized Crime Program. In addition, a new RICO classification was established in the Terrorism Program in FY 1980. To present a more accurate view of the current Organized Crime Program, organized crime informant matters are included in this chart. These matters became a component in the Organized Crime Program starting in FY 1981.

EXHIBIT No. 14

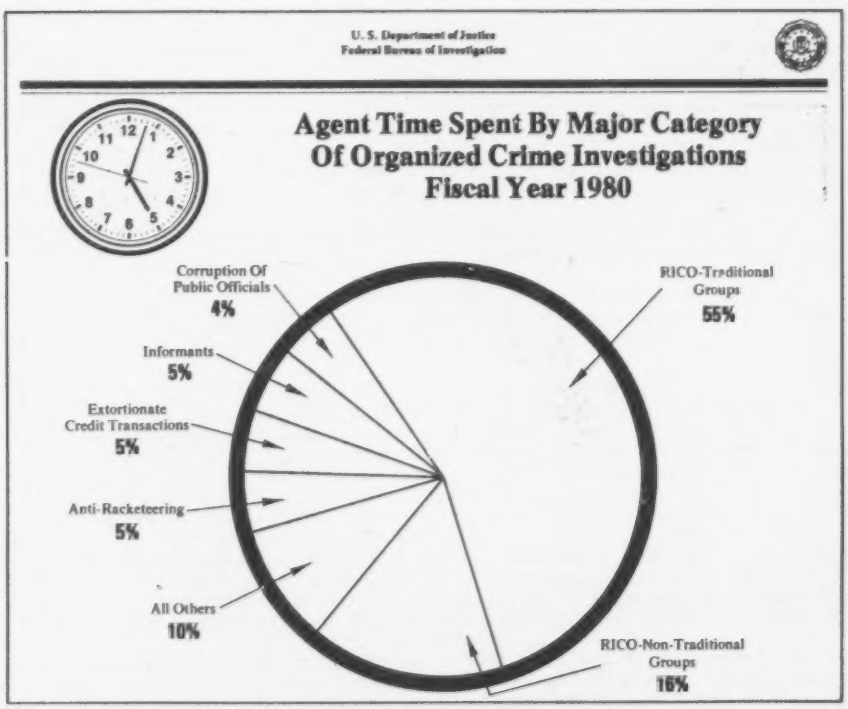


EXHIBIT No. 15

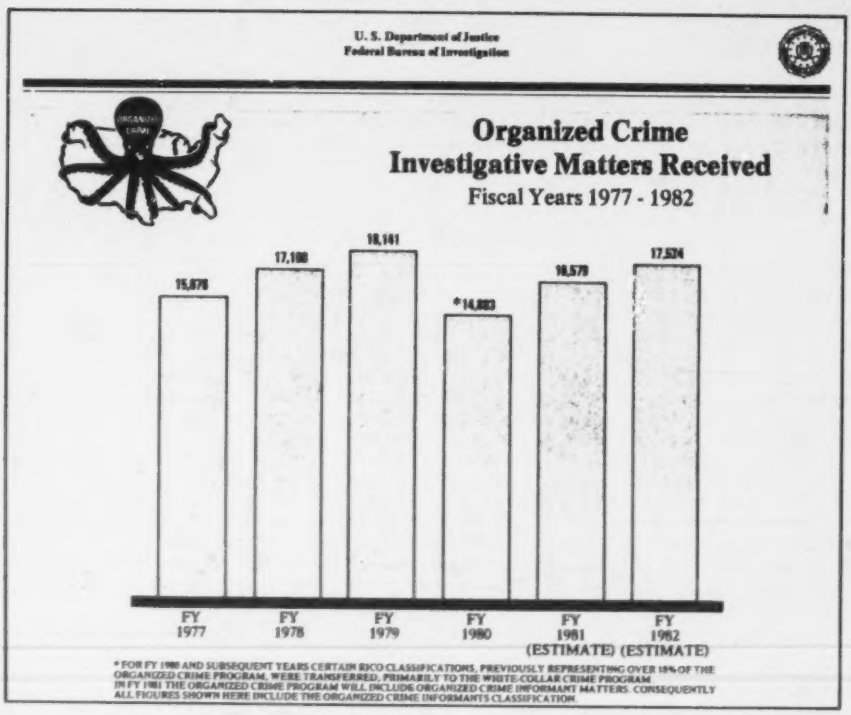

U. S. Department of Justice
Federal Bureau of Investigation
Organized Crime
Investigative Matters Received
Fiscal Years 1977 - 1982
15,878
17,188
18,141
*14,883
18,579
17,524
FY 1977
FY 1978
FY 1979
FY 1980
FY 1981 (ESTIMATE)
FY 1982 (ESTIMATE)
* FOR FY 1980 AND SUBSEQUENT YEARS CERTAIN RICO CLASSIFICATIONS, PREVIOUSLY REPRESENTING OVER 10% OF THE ORGANIZED CRIME PROGRAM, WERE TRANSFERRED, PRIMARILY TO THE WHITE-COLLAR CRIME PROGRAM
IN FY 1981 THE ORGANIZED CRIME PROGRAM WILL INCLUDE ORGANIZED CRIME INFORMANT MATTERS. CONSEQUENTLY ALL FIGURES SHOWN HERE INCLUDE THE ORGANIZED CRIME INFORMANTS CLASSIFICATION.

EXHIBIT No. 16

WHITE-COLLAR CRIME INVESTIGATIONS

White-collar crimes are generally defined as those illegal acts characterized by deceit, concealment, violation of trust, and which are not dependent upon the application or threat of physical force or violence. They are committed to obtain money, property, or services; to avoid the payment of money, property, or services; or to secure personal business advantage. White-collar crime violations occur with high frequency in every part of the United States without regard to geographic boundaries or population distribution. Many of these criminal acts depend on the corruption of public officials for their successful commission.

It is one of the FBI's principal program objectives to detect, investigate, and provide prosecutive support in resolving white-collar criminal activities within the jurisdiction of the FBI. The victims of these crimes are often citizens or small businesses that can ill afford financial loss. In many of the cases investigated by the FBI, the government and, consequently, the taxpayer are victims of the frauds. Millions of dollars each year are drained from the United States Treasury through white-collar crime schemes, not infrequently with the criminal participation of unscrupulous government officials and employees.

The long-range goal of this program is to curtail the incidence of white-collar crimes by investigating those high-impact and complex cases in support of successful prosecution. The areas of high priority in this regard are: public corruption; energy related violations; governmental program fraud; bank fraud and embezzlement; and business and consumer frauds perpetrated by those in responsible positions in all levels of government, labor, and the financial community.

The short-term objective is to provide the investigative concentration and response necessary to support the Administration's and the Attorney General's efforts against white-collar crime.

The program increase for fiscal year 1982 of $1,122,000 in the White-Collar Crime Program will provide for $500,000 to be used for increased undercover activities, and $622,000 to utilize the aircraft surveillance technique as needed in those instances when such a sophisticated procedure is warranted.

TECHNIQUE

Several techniques relatively new to this program are being utilized to detect and investigate white-collar crime. Among these techniques are undercover operations wherein Special Agents are able, through the use of suitable covers, to penetrate operations in several areas of criminal activity. The FBI conducts computer fraud schools at the FBI Academy to better train Special Agents in investigating frauds wherein a computer is an integral part of the fraudulent activity. Since computer-related fraud has become more prevalent, this training provides the FBI field office with increased capability of detecting crimes and collecting evidence in these matters. In many instances, an FBI field office will "target" an operation where there is reason to believe it is involved in an illicit activity. Concentrating its resources on the organization, the field office is often able to commence its investigation while the illicit activity is being planned or conducted.

The increased white-collar resources and their concentration have permitted the targeting of public corruption. Consequently, the FBI has been successful in the pursuit of those persons who violate their public trust. The white-collar criminal is becoming more sophisticated in devising and perpetrating schemes, thereby making detection and investigation more difficult. Increased expertise is required in gathering evidence for successful prosecution. The thrust of FBI investigations is being directed at the so-called professional swindler.

CURRENT INVESTIGATIONS

Public Corruption is one of the FBI's top investigative priorities within the White-Collar Crime Program. During Fiscal Year 1980, these investigations resulted in the conviction of 236 persons for their involvement in various corrupt acts prohibited by Federal statutes. There were 1,145 Public Corruption matters under investigation at the close of Fiscal Year 1980. These investigations involved subjects at all levels of Federal, state and local government. These investigations, by their very nature, are sensitive in that they affect the integrity and reputation of those in the public spotlight and are prone to news media sensationalism. Attempts to use the FBI for purely political purposes to discredit an opponent must always be considered in these matters. These investigations require a significant amount of personnel and are handled on a priority basis as it is imperative that a public official either be cleared of an allegation or brought to justice as soon as possible.

Recent economic developments on worldwide commodity markets have created heavy investments in gold and silver futures trading. Commodity fraud cases have experienced a trememdous increase in the past year, as the heavy trading of the futures contracts set another stage for the con man to conduct his fraudulent activities. The FBI's commitment in this area is increasing.

In addition, the FBI is conducting a number of Fraud Against the Government investigations throughout the United States in which substantial accomplishments are expected. These investigations will result in a significant deterrent

effect, as well as provide a basis for evaluation of the affected program with the view of taking steps to prevent recurrence of similar frauds.

ENERGY FRAUD

Energy fraud investigations are fraud matters which are related to the exploration, production, transfer, processing, or sale of energy products. This would include petroleum, coal, natural gas, uranium or other radioactive fuel derivitives, and synthetic fuel products.

During the past two years, the FBI has successfully investigated oil fraud cases involving the miscertification of crude oil in the Department of Energy Tier Pricing System. Oil fraud investigations also include the crude oil resellers who enter the distribution system for the purpose of artificially increasing crude oil prices. Recently, a conviction under the RICO Statute resulted in the forfeiture to the Government of a seven story office building located in Tulsa, Oklahoma. Approximately 35 oil-related cases are currently pending.

Approximately 125 investigations concerning coal-related fraud are pending. These investigations are centered in the coal producing areas of Pennsylvania, Alabama, Kentucky, West Virginia, and Virginia. Additional coal field crime cases will be opened as personnel to conduct these investigations becomes available. FBI investigations of coal field crime have resulted in significant convictions and indictments during Fiscal Years 1979 and 1980.

A new area of Energy Fraud will involve the Synthetic Fuels Program. The Energy Security Act of 1980 established the Synthetic Fuels Corporation for the purpose of developing new sources of energy. The Congress funded this quasi-government corporation with $20 billion to accomplish its mission. These funds will be available to the private sector in the form of Government grants and guaranteed loans for development of new energy sources. The FBI anticipates that a number of substantial program fraud cases will be developed as a result of this new program.

Another new area of Energy Fraud is the falsification of records involving federally owned oil wells in Wyoming and Colorado. The Department of Interior has recently discovered that the Federal Government is losing millions of dollars annually from oil royalties due to the fraudulent practices of crude oil processors in that area of the country.

EXHIBIT No. 17

AGENT TIME SPENT BY MAJOR CATEGORY OF WHITE-COLLAR CRIME INVESTIGATIONS: FY 1980

Major Category	Agent Work-years (Includes Field Supervisors)	Percent (%) of Program	Percent (%) of Total Field Agent Time
Fraud Against the Government	370	20.8%	5.2%
Bank Fraud and Embezzlement	354	19.9%	5.0%
Hobbs Act - Corruption of Public Officials *	158	8.9%	2.2%
Copyright Matters	50	2.8%	.7%
Bribery; Conflict of Interest	45	2.5%	.7%
National Bankruptcy Act	39	2.2%	.6%
Financial Crimes (ITSP; Mail Fraud, & Fraud by Wire)	479	26.9%	6.8%
RICO - White-Collar	171	9.6%	2.4%
All others	114	6.4%	1.6%
Total	1,780	100.0%	25.2%

*It should be noted that at the outset of FY 1980, several classifications of the Hobbs Act concerning corruption of police officers and public officials involved with organized crime were transferred to the Organized Crime Program from White-Collar Crime. These particular classifications consumed 63 agent work-years during FY 1979, representing 3.8% of the White-Collar Crime Program.

EXHIBIT No. 18

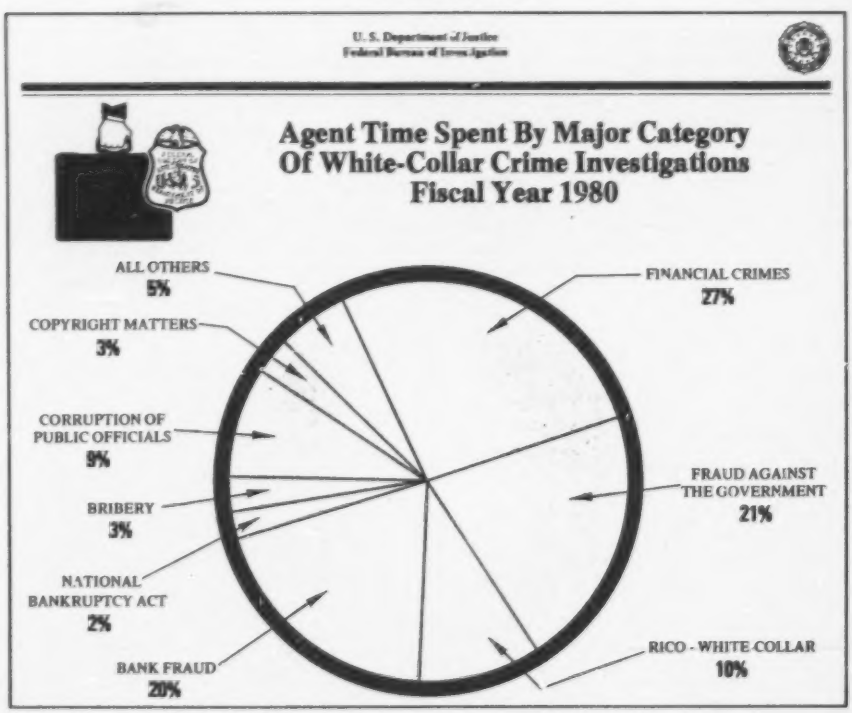
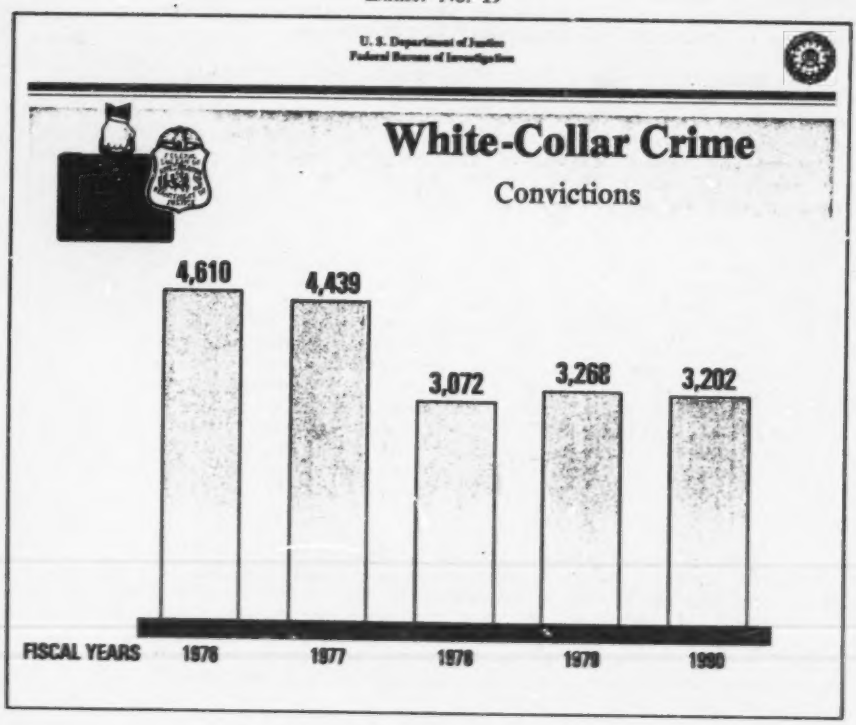


EXHIBIT No. 19



FOREIGN COUNTERINTELLIGENCE

ALONG WITH ORGANIZED AND WHITE-COLLAR CRIME INVESTIGATIONS, FOREIGN COUNTERINTELLIGENCE REMAINS A MAJOR PRIORITY OF THE FBI. THE BUREAU WILL CONTINUE ITS EFFORTS TO DETECT, PENETRATE, AND EXPOSE HOSTILE INTELLIGENCE OPERATIONS OF FOREIGN COUNTRIES WITHIN THE UNITED STATES. FURTHER INFORMATION RELATIVE TO THE COUNTERINTELLIGENCE RESPONSIBILITIES OF THE FBI IS CONTAINED IN THE FOLLOWING EXHIBITS:

EXHIBIT No. 20

FOREIGN COUNTERINTELLIGENCE PROGRAM

The FBI is charged with the responsibility of Foreign Counterintelligence (FCI) investigations and foreign terrorist investigations within the United States. This FCI function is derived from various criminal statutes, such as the Espionage Statutes and Registration Acts. In addition, FCI investigations are conducted in accordance with Presidential Directives issued pursuant to the inherent power of the President to protect and defend the Constitution of the United States. Executive Order 12036, issued January 26, 1978, is the current Presidential authority for the FBI's FCI investigations. In compliance with existing Executive Orders, the Attorney General has established guidelines for the conduct of FCI activities in the United States. The first such

guidelines became effective May 28, 1976. Within the parameters of these guidelines and statutes, the FBI is given discretion to develop and implement FCI programs.

The FCI mission is counterintelligence activity undertaken to protect the security of the United States by countering the hostile activities of foreign intelligence services and foreign-directed terrorists. It includes the development and dissemination of information concerning foreign intelligence or terrorist activity, as well as the penetration and neutralization of groups and individuals engaged is such activity.

The FCI Program of the FBI serves national policy makers by providing an overview of foreign intelligence activities within the United States. As a result, they are assisted in making informed decisions concerning national security requirements. The FBI also furnishes analyses to other agencies of the Executive Branch with specific intelligence responsibilities, enhancing the effectiveness of these agencies in accomplishing their missions. FBI investigative responsibilities have expanded due to a much wider geographic access, increase in numbers of individuals requiring investigation, and the use of sophisticated technical collection equipment on the part of foreign intelligence personnel.

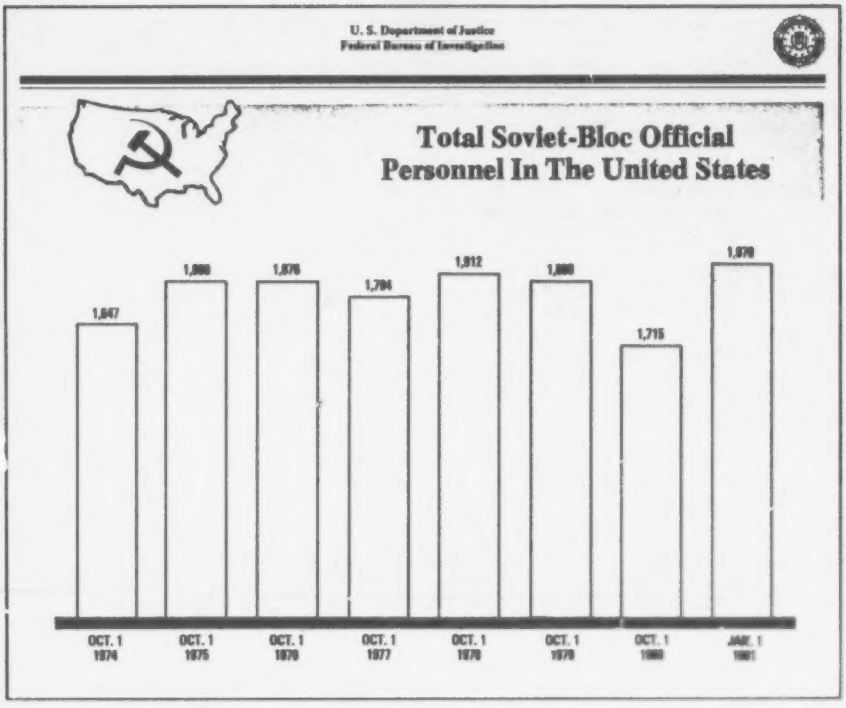
The FBI has experienced an increase in the number of Soviet immigrants; a large influx of repatriated American citizens, former political prisoners and their dependents from Cuba; substantial increase of investigative responsibilities as a result of the recent diplomatic recognition of the People's Republic of China (PRC); and an augmented effort to monitor and/or thwart the scientific and technological drain to foreign intelligence services.

Historically, the PRC diplomatic missions have sought and achieved parity with the diplomatic staff of the Soviets in the host country. Because of increasing United States scientific and technical exchange with the PRC, visiting Chinese scientific and technical delegations have increased in size and frequency. As of December 1980, approximately 5,000 PRC students have enrolled in academic institutions in the United States--many in scientific and technical areas. By the end of 1981, this number is expected to increase by another 1,000. It is the FBI's responsibility to detect intelligence officers implanted among this growing number of persons.

Another area of the FBI's FCI Program concerns those investigations of actual or potential violation of statues by international terrorists acting on behalf and with the concurrence of a foreign power. The FBI is charged with primary jurisdiction and overall responsibility for direction of investigations with regard to international terrorist incidents.

The FBI has a defined role within the Intelligence Community. Inasmuch as foreign-directed intelligence activities and terrorism are transnational in nature, the FBI must coordinate investigative operations with other United States agencies and cooperating foreign police and security services in order to insure the accomplishment of established FCI objectives. This liasion is a most integral component in the FBI's FCI program.

EXHIBIT No. 21



TERRORISM

APPROXIMATELY 99 PERCENT OF ALL TERRORIST ACTIVITY IN THE UNITED STATES FALLS WITHIN THE JURISDICTION OF THE FBI. THUS, IT IS THE FBI'S RESPONSIBILITY TO INSURE THAT THE PREVENTIVE (INTELLIGENCE-GATHERING) AND REACTIVE (CRIMINAL INVESTIGATIVE) CAPABILITIES OF THE FBI ARE SUFFICIENT TO MEET THE THREAT OF TERRORISM IN THIS COUNTRY. THIS PROGRAM WILL EXPERIENCE A $591,000 ENHANCEMENT FOR AIRCRAFT SURVEILLANCE OFFSET BY A PERSONNEL-RELATED DECREASE OF $877,000, LEAVING A NET REDUCTION OF 21 POSITIONS AND $286,000 IN FISCAL YEAR 1982. SEVERAL EXHIBITS DESCRIBING THIS PROGRAM FOLLOW:

EXHIBIT No. 22

TERRORISM INVESTIGATIONS

Terrorism investigations are undertaken in order to detect, prevent, and/or react to unlawful, violent activities of individuals or groups whose intent is to either overthrow the Government, interfere with the activities of a foreign government in the United States; substantially impair the functioning of the Federal Government, a state government, or interstate commerce, or deprive Americans of their civil rights

as guaranteed by the Constitution, laws, and treaties of the United States. The authority for these investigations is derived from Federal statutes and Executive Orders from the President and the Attorney General. In addition, violations of certain Federal statutes, which would logically relate to terrorism--such as bombing matters, nuclear extortion, sabotage, and the protection of foreign officials--are handled within the Terrorism Program.

Terrorist activity, which is defined as violent acts or acts dangerous to human life which are criminal under the laws of the United States and which are intended to intimidate or coerce the civilian population or influence the policy of the Government through intimidation or coercion, is investigated as part of this program. In order to combat terrorism, quality intelligence must be gathered and acted upon to prevent planned violence from occurring. Intelligence in this regard refers to FBI investigations, together with their resultant product, which ascertain information on the activities of individuals or groups involved in violence and violations of Federal law for the purposes enumerated in the Attorney General's Guidelines.

Domestic security investigations, which comprise only a small segment of the Terrorism Program, are based primarily on the Attorney General's Domestic Security Guidelines, which became effective in the FBI on April 6, 1976. As of February 27, 1981, there were 10 organizations and 47 individuals under investigation based on these Guidelines. If an individual or group is foreign-directed or foreign-based, investigation must conform to the Attorney General's Foreign Counterintelligence Guidelines, which were issued on June 1, 1973, and last revised in April 1980.

Domestic security investigations in the FBI underwent a radical change, both in number and in scope, as a result of the adoption of the Attorney General's Guidelines for Domestic Security. The FBI's policies of quality over quantity management and restricting investigation of individuals to leaders and policy makers also had a major impact on the limitation of domestic security cases.

While the terrorism program as a whole is not listed as a top priority program of the Federal Bureau of Investigation, individual incidents of terrorism require an immediate reaction placing the Bureau's response in a top priority category. Terrorist acts continue to be performed as evidenced by the murder of former Iranian Press Attache Ali Tabatabai, the murder of Cuban U.N. Attache Felix Garcia, and the bombings of Turkish establishments in New York and Los Angeles. These types of activities by terrorists are violent criminal acts and are deliberately calculated to create maximum physical and emotional disruption. Terrorist incidents such as these mirror the mobility and complexity of modern society, transcending both national and international borders.

Since approximately 99% of all domestic security activities fall within the investigative responsibilities of the FBI, it is necessary for the terrorism program to be characterized by determination and innovation. In an attempt to increase the intensity and variety of its response, the terrorism program has begun employing several new resources. The application of the Racketeer Influenced and Corrupt Organization Statutes to terrorist activity has provided further thrust to the investigation of terrorist groups who are involved in murder, extortion, bombing or arson activity. New legislative areas are being researched for improvement of laws. Computerization of major case information has begun to assist in the analysis and retrieval of vital information. Special investigative techniques such as aircraft and technical surveillance have provided timely and valuable information on the activities of terrorists. The ominous nature of terrorist acts does not allow for complacency in planning for a response to these incidents or in obtaining advanced information of planned violent activity. Therefore, the future strategy of the terrorism program is as dynamic as the course of terrorist activity.

OTHER INVESTIGATIVE RESPONSIBILITIES

ALTHOUGH THE QUALITY CASE CONCEPT DICTATES THAT THE FBI WILL REFER LOWER FEDERAL PRIORITY INVESTIGATIONS TO LOCAL AUTHORITIES WHEN FEASIBLE AND WHERE DUAL JURISDICTION EXISTS, THE FBI STILL HAS A PROMINENT ROLE IN MANY REACTIVE-TYPE INVESTIGATIONS. THESE INVESTIGATIONS ARE MOSTLY IN THE PROPERTY AND PERSONAL CRIMES PROGRAMS. THE FBI'S POLICY WITH RESPECT TO BANK ROBBERY INVESTIGATIONS IN THE PERSONAL CRIMES PROGRAM WILL BE TO CONTINUE TO RESPOND TO EACH VIOLATION AS IT OCCURS AFTER WHICH A DETERMINATION CAN BE MADE AS TO WHETHER FEDERAL OR LOCAL AUTHORITIES WILL BE RESPONSIBLE FOR THE CASE. YOU MAY BE SURE THAT THE FBI WILL ASSUME RESPONSIBILITY FOR INVESTIGATING THOSE CASES WHERE THERE IS VIOLENCE, INJURY, DEATH, HOSTAGES, OR INDICATIONS OF ORGANIZED CRIME OR INTERSTATE ACTIVITY.

EFFORTS IN UNDERCOVER OPERATIONS HAVE BEEN THE SUBJECT OF RECENT NATION-WIDE PUBLICITY. DURING THE CURRENT FISCAL YEAR, THE FBI HAS A TOTAL OF $4,891,000 AVAILABLE TO FUND SUCH OPERATIONS IN ALL OF ITS INVESTIGATIVE PROGRAMS. THIS REQUEST INCLUDES AN INCREASE OF $2,859,000 FOR UNDERCOVER OPERATIONS.

SOME OTHER INVESTIGATIVE RESPONSIBILITIES OF THE FBI INCLUDE PERSONAL CRIMES, FUGITIVES, CIVIL RIGHTS, GENERAL GOVERNMENT CRIMES, AND GENERAL PROPERTY CRIMES. THE FOLLOWING EXHIBITS RELATE TO THESE TYPES OF MATTERS AS WELL AS TO INFORMANTS:

EXHIBIT No. 23

AGENT TIME SPENT BY MAJOR CATEGORY OF TERRORISM INVESTIGATIONS: FY 1980

Major Category	Agent Work-Years (Includes Field Supervisors)	Percent (%) of Program	Percent (%) of Total Field Agent Time
Neutrality Matters	3	1.9%	---
RICO - Terrorism	37	25.3%	.5%
Passport and Visa Matters	6	3.9%	.1%
Domestic Security	15	10.3%	.2%
Atomic Energy Act	4	2.5%	.1%
Protection of Foreign Officials	27	18.2%	.4%
Domestic and Foreign-Based Bombing Matters	35	23.7%	.5%
Bombing Matters - Other attempts and actuals	3	2.1%	---
Espionage - X	5	3.7%	.1%
Bomb Threats	4	3.1%	.1%
Informants	4	2.7%	.1%
*All others	4	2.6%	---
Total Terrorism Program	147	100.0%	2.1%

To present a more accurate view of the current Terrorism Program, terrorist informant matters are included in this chart. These matters became a component in the Terrorism Program starting in FY 1981.

* Includes: civil unrest, anti-riot laws, overthrow of Government, sedition, treason, and sabatoge.

EXHIBIT No. 24

PERSONAL CRIMES PROGRAM

The Personal Crimes Program of the FBI addresses a group of reactive criminal investigative matters which involve the common characteristics of threatened or actual personal injury or loss of life. These crimes, which include bank robberies, kidnapings, extortions, aircraft hijackings, Congressional assassinations, and assaults against Federal officers, among others, often have considerable impact on the communities and individuals involved due to their potential for violence, the high public profile of their victims, and their potential for substantial monetary losses. Through its investigations of these offenses, the FBI seeks to reduce the impact of personal crime victimization by providing an investigative response to reported violations; identifying, collecting, and preserving evidence to direct and support investigative efforts; conducting logical investigation to identify, locate, and apprehend criminals engaged in personal crimes; and providing prosecutive support to United States Attorneys' Offices. In Fiscal Year 1980, a five percent increase in investigative matters received in the Personal Crimes Program occurred.

For Fiscal Year 1982, a total of 1,044 workyears are being requested for Personal Crimes Program investigations, consisting of 672 Agent workyears and 372 support workyears. This resource level is the same as that approved for Fiscal Year 1981.

Accomplishments resulting from Personal Crimes Program investigations contribute substantially to the overall level of performance and success enjoyed by the FBI. During Fiscal Year 1980, 1,011 arrests were made, 242 criminals located, and 34 criminal summonses served; 1,140 complaints and 178 informations were filed; 1,843 true bills of indictment were returned; 40 persons were handled through pre-trial diversion plans; and 1,788 convictions were

obtained. Ninety-six percent of the convictions were for felony offenses and 88 percent of the individuals convicted were sentenced to a period of confinement.

In addition, $270,000 in fines were levied and more than $18,900,000 worth of stolen and illegally possessed property was recovered as a result of FBI investigative activity. Overall, the Personal Crimes Program accounted for 22 percent of all investigative statistical accomplishments realized by the FBI's investigative programs. This favorable level of performance was attained through the efforts of nine percent of the FBI's investigative resources.

The primary investigative area within the Personal Crimes Program is forcible crimes against financial institutions, which includes bank robberies, bank burglaries, bank larcenies, and extortionate demands against banking institutions. Federal Bank Robbery Statute violations increased in Fiscal Year 1980 for the fourth consecutive year, reaching a record high of 7,300 offenses. These 6,328 bank robberies, 627 bank burglaries, and 345 bank larcenies represent an 11 percent increase over Fiscal Year 1979. Losses attributed to these crimes exceeded $44,800,000. As of the close of Fiscal Year 1980, solutions were effected in 3,664 of the 7,300 violations. FBI investigation, either alone or in conjunction with state and local law enforcement, contributed to 65 percent of these solved cases. Among the investigative accomplishments resulting from FBI investigation of Federal Bank Robbery Statute violations during fiscal year 1980 were the conviction of 1,502 subjects, of which 99 percent were for felony offenses. Additionally, 791 arrests were made, 204 subjects located, 929 complaints and 139 informations filed, and 1,563 true bills of indictment returned. Hobbs Act violations directed against kidnap/extortion style offenses amounted to approximately $1,500,000. For fiscal year 1982, the FBI plans to commit 693 workyears (448 Agent and 245 support) to combat forcible crimes against financial institutions. This resource level will permit continuation of investigative activity being performed in fiscal year 1981 without interruption.

Major investigative efforts are also being directed in several other areas of the Personal Crimes Program, most notably kidnaping, extortion, assaulting a Federal officer, and Congressional assassination. An FBI task force is probing the disappearance of children in the Metropolitan Atlanta area to determine if a violation of the Federal Kidnapping Statute exists. This investigation grew out of the apparent abduction of 15 children over a 16-month period in the City of Atlanta and immediate vicinity, of which the bodies of 11 children were recovered. Since the inception of this investigation, one more child has been reported missing and two additional bodies have been recovered. An attempted extortion of $3,000,000 from a Nevada casino occurred in August, 1980. An attempt to neutralize an explosive device placed in the casino failed, resulting in the explosion of the device and extensive damage to the building. Investigation into the assassination of United States District Court Judge John H. Wood continues. Judge Wood was murdered in front of his residence in San Antonio, Texas, in May 1979. This investigation is receiving preferred investigative attention in FBI Field Offices. An individual indicted for participation in the murder of United States Congressman Leo J. Ryan was returned to the United States in November 1980, after being expelled by the Government of Guyana. Congressman Ryan was killed in an ambush at Port Kaituma, Guyana, in November 1978, after having conducted an official inquiry into the activities of the Peoples Temple in Jonestown, Guyana.

EXHIBIT No. 25

AGENT TIME SPENT BY MAJOR CATEGORY OF PERSONAL CRIMES INVESTIGATIONS: FY 1980

Major Category	Agent Work-years (Includes Field Supervisors)	Percent (%) of Program	Percent (%) of Total Field Agent Time
Kidnaping	68	9.9%	.9%
Extortion	47	6.9%	.7%
Assaulting or Killing a Federal Officer	50	7.2%	.7%
Forcible Crimes Against Banking Institutions	447	64.9%	6.3%
Crime Aboard an Aircraft	19	2.7%	.3%
Hobbs Act-Commercial Institutions	32	4.6%	.4%
All others	26	3.8%	.4%
Total	689	100.0%	9.7%

EXHIBIT No. 26

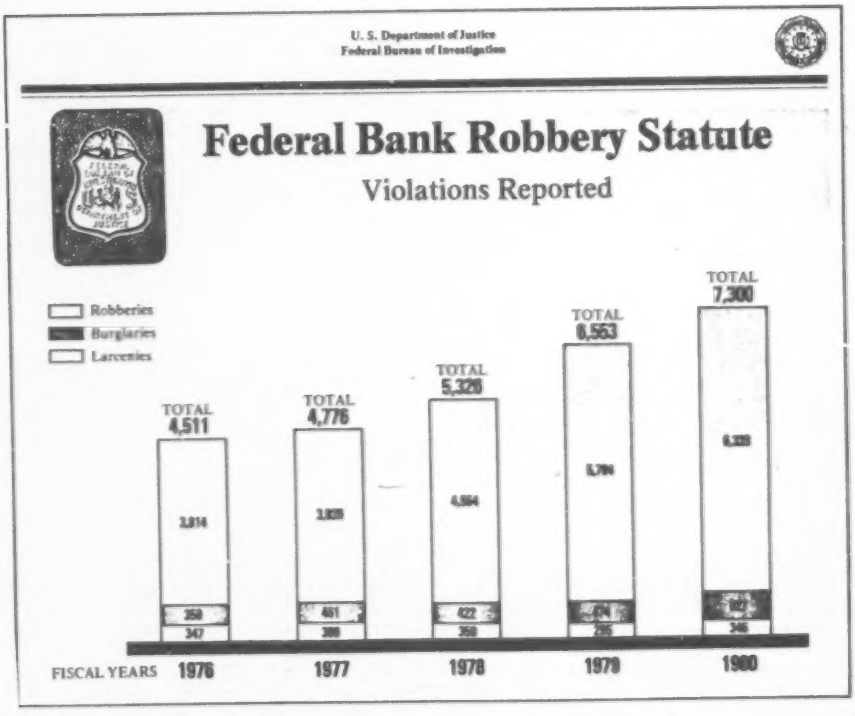


EXHIBIT No. 27

FUGITIVE INVESTIGATIONS

In Fiscal Year 1980, a total of 5,581 fugitives wanted by the FBI were successfully taken into custody. This total includes 4,287 "arrests" and 1,294 "locates". Of those taken into custody, 1,179 were being sought at the request of state, local and other Federal agencies, including the Department of Defense, for violations of the Unlawful Flight Statute, escaped Federal prisoners, bond default and military deserters. Included in this number were 1,052 fugitives being sought on behalf of the local and state law enforcement community under provisions of the Unlawful Flight Statute. The

remaining 4,402 fugitives arrested or located during fiscal year 1980 had been charged with substantive Federal violations within the FBI's investigative judrisdiction.

In order to concentrate its manpower resources on priority criminal investigations; i.e., Organized Crime, White-Collar Crime and Public Official Corruption, the FBI has been required to de-emphasize its involvement in certain lesser impact matters. Consequently, the fugitive phase of the FBI's investigative operations is one area from which manpower has been diverted for higher priority reassignment. In this regard, during fiscal year 1978, the FBI and Department of Defense agreed that the FBI would no longer seek the apprehension of routine deserters, but would attempt to locate only those who desert under aggravated cricumstances. The Department of Justice, to further assist the FBI in lessening its fugitive responsibiities, authorized the U. S. Marshals Service, effective October 1, 1979, to assume the responsibility for locating those fugitives wanted as alleged probation, parole and mandatory release violators, and for alleged violations of Escape, Rescue and Bond Default Statutes.

The FBI's responsibilities for seeking individuals wanted for substantive violations within its jurisdiction, and those wanted by the local and state law enforcement community who have fled across state lines to avoid apprehension or confinement, remain unchanged.

(1)
"Arrests" are those instances where FBI Agents actually make or participate in the apprehension.

(2)
"Locates" are those instances where the investigative efforts or cooperative services of the FBI result in the arrest of a fugitive by another law enforcement agency.

EXHIBIT No. 28

AGENT TIME SPENT BY MAJOR CATEGORY OF FUGITIVE INVESTIGATIONS: FY 1980

Major Category	Agent Work-years (Includes Field Supervisors)	Percent (%) of Program	Percent (%) of Total Field Agent Time
Bond Default and Desertion	2	0.7%	---
Escaped Federal Prisoner	10	4.6%	.1%
Unlawful Flight to Avoid Prosecution - Subject wanted for violent crime	160	74.9%	2.3%
Unlawful Flight to Avoid Prosecution - Subject wanted for property crime or narcotics	17	8.1%	.2%
Unlawful Flight to Avoid Prosecution - All others	25	11.7%	.4%
Total	214	100.0%	3.0%

EXHIBIT No. 29

CIVIL RIGHTS INVESTIGATIONS

The FBI's position on civil rights matters is to address allegations which involve the abridgment of rights provided to the citizens and inhabitants of the United States under the Constitution or laws of the United States. The primary objective in civil rights matters is to enhance and protect those rights through expeditious and thorough attention to matters within the FBI's investigative jurisdiction. The FBI's long-range goal is for the continued improvement of the atmosphere in which individuals will be enabled to obtain and maintain their civil rights as guaranteed by the Constitution and laws of the United States.

Resources will also be used in 1982 to provide specialized programs, including regional conferences and seminars throughout the field and at FBI Headquarters, for the benefit of investigative and supervisory personnel. The goals and objectives of these specialized programs are to enhance managerial and investigative skills of Special Agents in civil rights investigations, including keeping abreast of the complex Civil Rights Statutes, in order to afford timely, accurate, and effective responses in civil rights matters.

Similar programs will be conducted for local and state law enforcement officers (including FBI training to officers at the FBI National Academy) to increase their knowledge concerning Constitutional rights and the special duties and obligations which the law imposes on them to uphold and protect such rights. The goals and objectives of this training are to reduce the number of civil rights investigations required by increasing the knowledge of local and state law enforcement officers.

The FBI investigated 7,995 civil rights cases in fiscal year 1979 and 8,695 cases in fiscal year 1980. It is estimated that between 9,000 and 10,000 civil rights cases will be investigated during the current fiscal year. Civil rights investigations, many of which are extensive, are conducted pursuant to policy established by the United States Department of Justice.

EXHIBIT No. 30

AGENT TIME SPENT BY MAJOR CATEGORY OF CIVIL RIGHTS INVESTIGATIONS: FY 1980

Major Category	Agent Work-years (Includes Field Supervisors)	Percent (%) of Program	Percent (%) of Total Field Agent Time
Civil Rights - Preliminary investigations involving violence	123	78.1%	1.7%
Civil Rights - All other preliminary investigations	8	5.2%	.1%
Civil Rights - Miscellaneous	9	5.8%	.1%
Civil Rights Act of 1964	5	2.9%	.1%
Discrimination in Housing	9	5.6%	.1%
All others	4	2.4%	.1%
Total	158	100.0%	2.2%

EXHIBIT No. 31

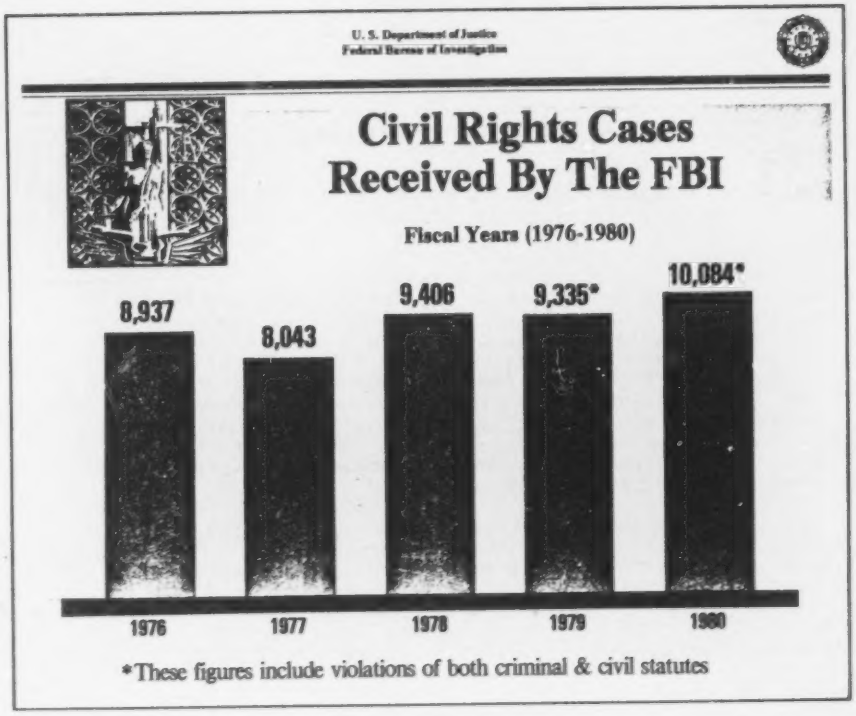


EXHIBIT No. 32

GENERAL GOVERNMENT CRIMES PROGRAM

The FBI investigates major violations involving criminals and criminal groups whose activities are directed against property owned by the United States Government and/or individuals who are located on property where the United States has investigative jurisdiction. These crimes involve theft of Government weapons or explosives, high-value property, and acts of violence, (i.e., homicides, assault, and robbery) occurring on Government reservations, in Indian Country, and in Federal penitentiaries. This includes approximately 430 major Department of Defense installations and 125 Indian reservations. During fiscal year 1980, 1,521 criminal informations and indictments were obtained, 1,005 persons were convicted, 585 were arrested and/or located, and recoveries amounting to $4,166,746 were accomplished under this program.

Crimes on Government reservations frequently involve violence, such as a recent case where individuals broke into a Federal penitentiary, held guards and inmates hostage at gunpoint, and subsequently executed an inmate. Investigation by the FBI resulted in the arrest and conviction of eleven individuals who, under the guise of a religious sect, perpetrated crimes involving impersonation, extortion and theft of Government property.

The Nation's Indian reservations are extremely vulnerable to violent civil disturbances which can result in widespread lootings, arson and crimes of violence. The FBI and the Departments of Justice and Interior are currently drafting a Memorandum of Understanding which delineates the respective roles of Federal law enforcement agencies in future Indian reservation civil disturbances. This will achieve an improved

reactive response in future civil disturbances, thus enabling law enforcement to lessen the magnitude of disruption in future occurrences.

EXHIBIT No. 33

GENERAL PROPERTY CRIMES PROGRAM

The objective of this program is the identification and resolution of property crimes within the jurisdiction of the the FBI, particularly those of a patterned, commercialized, or major nature; and arrest and prosecution of top thieves, fences, and organized crime groups involved in these violations. Crimes dealt with in the General Property Crimes Program (GPCP) have substantial, direct impact on the American public. Of the violations comprising the Uniform Crime Report Program Index, property crimes represent 90 percent of the total incidents. Property crime increased 49.1 percent between 1970 and 1979. The workhours expended in the GPCP accounted for the following percentages of the FBI's statistical accomplishments during Fiscal Year 1980: Convictions - 15 percent; fines - 3 percent; potential economic loss prevented - 7 percent; and recoveries - 34 percent.

Numerous undercover operations are presently being managed in the GPCP. Of particular interest is the undercover operation entitled "ABSCAM," wherein prosecutable cases have been developed against one U. S. Senator, six U. S. Congressman, three Philadelphia City Councilmen, an Immigration and Naturalization Service Investigator, and several middlemen/influence peddlers. All have been indicted for various crimes related to bribery and the conspiracy to commit bribery. To date, five U. S. Congressmen, two City Council members, and five others have been convicted of the crimes with which they were charged. In addition, ABSCAM has resulted in the recovery of artworks valued at $1,000,000 and fraudulent certificates of deposit representing a potential economic loss of approximately $690,000,000.

EXHIBIT No. 34

FBI INFORMANTS

Many sources of information are available to the FBI, but informants undoubtedly provide the single most important means of obtaining information in its most complex investigations. The nature of investigation has become more complicated, and criminal enterprises have reached the degree of sophistication where any anticipation of success would be impossible without the use of informants. Most of the long-term undercover operations and the utilization of electronic surveillance would not be possible without the participation of informants. Informants provide information of intelligence value, the solution of crimes, the recovery of stolen property and contraband, the location of wanted persons, and the detection of crimes in the planning stages.

Informants furnish information regarding criminal acts which are in violation of state laws and of Federal law over which the FBI does not have jurisdiction, such as narcotic trafficking. This information is disseminated to the appropriate law enforcement agency and has greatly assisted overall detection and enforcement of the law at all levels.

The FBI attempts to develop informants who have a willingness and ability to provide information on a regular basis and are of known reliability in matters within its investigative jurisdiction. The ability to control these individuals is also utilized as a factor in determining their suitability to act as an FBI informant.

Informants are paid on a cash-on-delivery basis for services rendered and expenses incurred. The amount paid to an informant is determined by the FBI based on the value of the information received.

Informants are not used by the FBI to circumvent legal or ethical restrictions. They are given specific instructions not to participate in acts of violence, use unlawful techniques to obtain information, or initiate a plan to commit criminal acts. Informants are sometimes allowed to participate in criminal activities with persons under investigation if it is determined necessary to obtain information needed for purposes of Federal prosecution. If this participation in criminal acts involves serious criminal activity, authorization is obtained from the U.S. Department of Justice prior to an informant's being used.

If an informant violates the law when acting on behalf of the FBI and was not previously directed to do so by the FBI, this information is disseminated to the appropriate authorities. If an informant provides information regarding illegal activities in which he has been involved, not connected with his being an informant, a judgment is made regarding his value as an informant in relation to the nature of the crime he has committed. If an informant commits a serious crime, the appropriate prosecutive authorities are advised.

Concerning members of the professional community, the FBI operates no informants in this category in a manner which would violate any ethical restrictions placed upon them as a result of their professions. To insure that these violations do not occur, the information furnished by these types of informants is reviewed regularly by the FBI; they are not given assignments which would violate these ethical restrictons; and they are instructed not to furnish any information which would violate these restrictions. If these types of informants are determined to have furnished such information, it is not used by the FBI.

The FBI operates six categories of criminal informants: terrorism informants, general criminal informants, organized crime informants, organized crime top echelon informants, white-collar crime informants, and confidential sources.

A record is maintained regarding all persons who are paid for services or expenses whether they are considered informants or not. The FBI pays certain individuals for services and expenses who, because of their inability to provide information on a regular basis or some other reason, are not considered informants. The FBI operates informants who are not paid and who furnish information on a confidential basis. The identity of these informants and a record of the information they furnish are maintained in the files of the FBI.

COORDINATION OF INVESTIGATIONS

THE FBI COORDINATES INVESTIGATIONS AND IMPLEMENTS NATIONAL POLICY DECISIONS CENTRALLY AT ITS HEADQUARTERS IN WASHINGTON, D. C. REQUIREMENTS FOR THIS FUNCTION ARE $16,328,000 AND 485 POSITIONS, A DECREASE OF $504,000. DETAILS ON THIS PROGRAM ARE PROVIDED IN THE FOLLOWING EXHIBIT:

EXHIBIT No. 35

HEADQUARTERS COORDINATION OF INVESTIGATIONS

The primary purpose of this activity is the overall management of field efforts in ten investigative programs identified as: Civil, Applicant and Other Investigations; Organized Crime; White-Collar Crime; General Government Crimes; Fugitive; Personal Crimes; General Property Crimes and General Crimes Informants; Civil Rights; Terrorism; and Foreign Counterintelligence (FCI). This management function includes such responsibilities as the development of new initiatives, the evaluation of field efforts in connection with each funded program, the administration of certain funds, the coordination of major investigations, the establishment of policy, the identification of training needs, the allocation of investigative resources throughout the field, and the maintenance of liaison with other agencies of the Executive Branch and the Legislative Branch of the Government.

TRAINING

ALL NEW AGENT APPOINTEES MUST ATTEND A TRAINING COURSE AT THE FBI ACADEMY IN QUANTICO, VIRGINIA. THIS TRAINING, IN-SERVICE TRAINING FOR FBI PERSONNEL AND FIELD FEDERAL TRAINING WILL REQUIRE $12,225,000 AND 256 POSITIONS.

COST-FREE TRAINING FOR STATE AND LOCAL LAW ENFORCEMENT OFFICIALS IS PROVIDED AT THE FBI ACADEMY AND THROUGHOUT THE FIELD. THIS PROGRAM WILL BE INCREASED TO $17,287,000 AND 361 POSITIONS, REPRESENTING A PROGRAM ENHANCEMENT OF $624,000 AND 1 POSITION. THE FOLLOWING EXHIBITS DESCRIBE THESE TRAINING PROGRAMS:

EXHIBIT No. 36

FBI TRAINING

Training provided by the FBI falls generally into two categories; new agents' training at the FBI Academy and in-service training for Special Agents and support personnel at the Academy and in the 59 field offices. Direct field support programs are provided by FBI training instructors to enhance field operations.

The New Agents' Training Program provides the highest level of training to assure that knowledge and skills are provided to enable new special agents to discharge their complex responsibilities in a superior manner at the outset of their professional careers and to include follow-up training and assessment during the probationary period.

The in-service training and direct field support programs afford training and assistance at the FBI Academy and in the field for special agent personnel, enabling them to lawfully and properly:

- conduct the complex national priority investigations, organized crime, white-collar crime, and foreign counter-intelligence, as well as all other investigative duties; and

- apply basic law enforcement skills and knowledge, such as legal, behavioral science, firearms, defensive tactics, and raid and arrest techniques.

Employees participate in sophisiticated management, assessment, and education programs to improve the ability of mid- and upper-level FBI executives to more effectively carry out their complicated responsibilities, including personnel and program management, affirmative action, and budgeting.

In-service training provides job enrichment and career development opportunities for personnel through educational programs at the FBI Academy and elsewhere.

Training efforts at the Academy and in the field support crisis management training for FBI personnel who will be expected to respond in the event of terrorism, aircraft hijacking, hostage incidents, and other life-threatening situations.

FBI training efforts include faculty improvement and research and development programs, which are essential to provide proper direct field support and training program improvement and assessment.

During fiscal year 1980, 4,712 FBI employees attended various training sessions conducted at the FBI Academy. Seven hundred and one new agents received training during this period, with 497 actually being graduated during the fiscal year. Specialized in-service training included courses in white-collar crime, organized crime, foreign counterintelligence, legal matters, crisis management, forensic science matters, behavioral science topics, pilot training and certification, management and executive development, technical and electronic training, and instructor and special seminars.

EXHIBIT No. 37

POLICE TRAINING OPERATIONS

The FBI provides courses of instruction for state and local criminal justice practitioners on a cost-free basis, both at the FBI Academy and throughout the United States at state, regional, and local training facilities in order to improve their administrative, investigative, management, and technical capabilities. This instruction is offered consistent with instructional expertise, availability of personnel, and budgetary limitations.

The principal course offered at the FBI Academy is the "FBI National Academy Program." This is an eleven-week, multi-disciplined course for seasoned law enforcement managers nominated by their agency heads because of their potential for continuing advancement. Sessions are conducted four times a year for a total of 1,000 officers annually. The academic courses in this program are accredited by the University of Virginia.

In response to a void in executive training, the FBI in 1976 initiated the National Executive Institute. This 18-day program, specifically designed for the police chief executives of our Nation's largest law enforcement agencies, is conducted at the FBI Academy on an annual basis. Over 120 chief executives have been graduated from this program. Scheduled for implementation in Fiscal Year 1982 is the Law Enforcement Executive Seminar, which is designed for police chief executives from mid-sized agencies.

Specialized schools and courses dealing with a broad range of criminal justice related topics such as Police Personnel Management, Leadership, Human Resource Development, Effective Communications, Hostage Negotiation, Terrorism and Counterterrorism, Death Investigations, Interpersonal Violence, Criminal Psychology, and similar subjects are offered at the Academy. They range in length from three days to four weeks and during fiscal year 1980, 114 specialized schools and symposia were

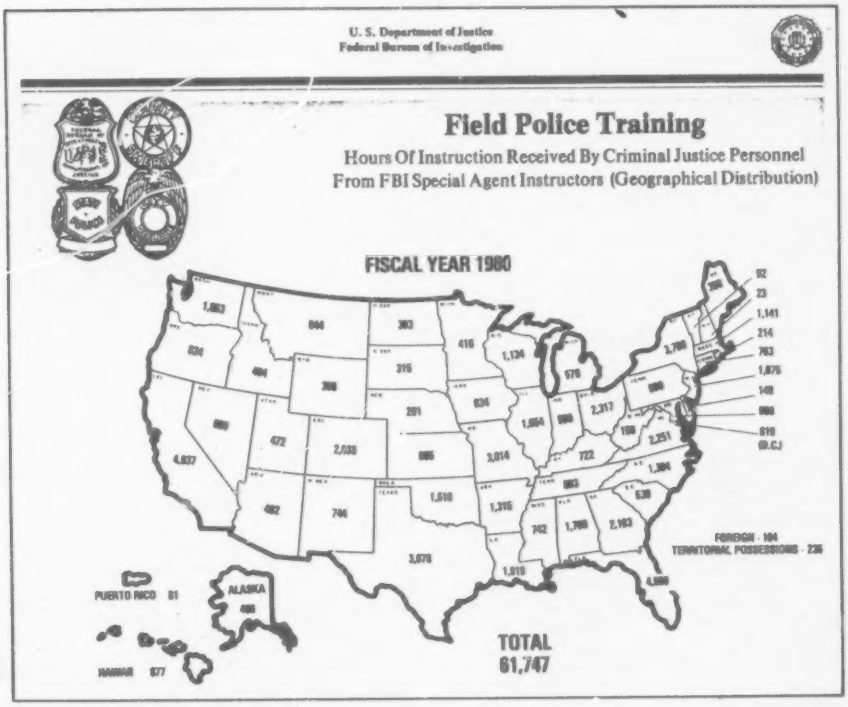
offered for 3,242 state and local law enforcement officers. Included in this figure were the following national conferences: Third International Symposium on Terrorism presented to over 180 top Federal, state and local law enforcement officials; National Symposium on Economic Arson with 186 attendees; and National Crime Laboratory Symposium with 187 attendees.

In addition to course offerings, FBI Academy faculty provided research and consultation to local law enforcement on a myriad of topics and investigative techniques, including psycholinguistics, forensic hypnosis, psychological profiling of unknown subjects of multiple homicide and sex crime cases, hostage negotiations, and crisis management.

During fiscal year 1980, FBI field instructors provided 61,747 hours of instruction in 5,129 law enforcement schools attended by 168,259 criminal justice practitioners.

Instructors from FBI Headquarters supported this field training effort in a variety of subjects such as forensic science, applied criminology, identification matters, management, uniform crime reporting, arson, death investigation, and instructor development. The Training, Laboratory, Identification, Criminal Investigative, and Technical Services Divisions offered a total of 327 specialized schools to local, county, and state criminal justice personnel.

EXHIBIT No. 38



LABORATORY SERVICES

A TOTAL OF $14,516,000 AND 312 POSITIONS WILL BE NEEDED FOR LABORATORY EXAMINATIONS AND EXPERT TESTIMONY INVOLVING FBI CASES, AN INCREASE OF $2,644,000 AND 24 POSITIONS. THESE POSITIONS ARE NECESSARY TO PROVIDE SCIENTIFIC AND TECHNICAL SUPPORT AND TRAINING IN THE LATEST FORENSIC SCIENCE TECHNIQUES. IDENTICAL SERVICES ARE PROVIDED BY THE SAME EMPLOYEES TO ANY REQUESTING STATE AND LOCAL LAW ENFORCEMENT AGENCY. THIS WILL REQUIRE $6,782,000 AND 122 POSITIONS IN FISCAL YEAR 1982, WHICH IS $391,000 AND 1 POSITION MORE THAN THE BASE FOR 1981. THESE TWO PROGRAMS ARE EXPANDED UPON IN THE FOLLOWING EXHIBITS:

EXHIBIT No. 39

LABORATORY SERVICES

FBI Laboratory services are funded and administered under two programs called Forensic Services-Federal and Forensic Services-Non-Federal. Although a distinction is made in administering funds and capturing statistics, all Laboratory examiners and technicians work in both programs using the same laboratory facilities and instrumentation.

Under the Forensic Services-Federal program direct support is provided to ongoing FBI investigations with particular attention being paid to the FBI's three national priorities -- organized crime, white-collar crime, and foreign counterintelligence. Many times the success of investigations in these areas is directly dependent on the scientific and technical support and service provided through this program.

Organized crime and white-collar criminals and foreign intelligence operatives are using more sophisticated methods to further their unlawful activities. The unique expertise of FBI Laboratory examiners is being called upon regularly to provide such services as document, polygraph, gambling, and loansharking examinations and to provide scientific analysis of physical evidence submitted in all areas of Federal jurisdiction. Other services provided to Federal law enforcement include analysis of secret writing, cryptanalysis, translation, surveillance photography, and the preparation of trial charts and three-dimensional models which are often necessary to demonstrate the results of Laboratory analysis or examination.

The Forensic Services-Non-Federal program makes the extensive resources and services of the FBI Laboratory available, when requested, to law enforcement officers throughout the country so as to facilitate investigations and prosecutions in criminal matters. Although the Laboratory will continue to provide case examination services to state and local enforcement, it will be deemphasized and eventually limited to the more complicated examinations and/or jurisdictions that do not have laboratories possessing the capability to conduct the requested examinations.

The major thrust of the Forensic Services - Non-Federal program will be in the areas of research and training at the new Forensic Science Research and Training Center at the FBI Academy. The FBI Laboratory plans, budget permitting, to train examiners from state and local laboratories through short courses consisting of practical bench techniques for examining physical evidence. This will

prepare these laboratories to assume more of the examination workload and lessen their dependence on Federal Laboratories. To implement this, the FBI has instituted two new policies: 1. A new system of priorities placing FBI cases over state and local cases except those with national implications and 2. A policy of returning cases submitted by state and local crime laboratories if they have the capability to conduct the requested examinations. Other policies for gradual and controlled reduction of state and local dependence on Federal laboratories are presently being considered by the FBI.

EXHIBIT No. 40

FBI LABORATORY ACCOMPLISHMENTS

During fiscal year (FY) 1980, 619,454 scientific examinations were conducted by the FBI Laboratory. This represents a 24.1% increase over FY 1979. This increase is due in part to the complexity of the quality cases now being emphasized in FBI investigative programs and also partly related to advancing available technology which has broadened the examination potential for much of the evidence received.

Of the 619,454 examinations performed, 378,149 or 61% were in connection with Federal cases and 241,305 were for state and local law enforcement. In support of conclusions reached in these examinations, laboratory experts testified over 800 times and were prepared to testify in 181 additional cases but did not take the stand because of guilty pleas, continuance, etc.

Other notable accomplishments include the translation of 32,426 foreign language specimens; 2,111 polygraph examinations in connection with Federal investigations; and the preparation of 1,002 investigative aids.

EXHIBIT No. 41

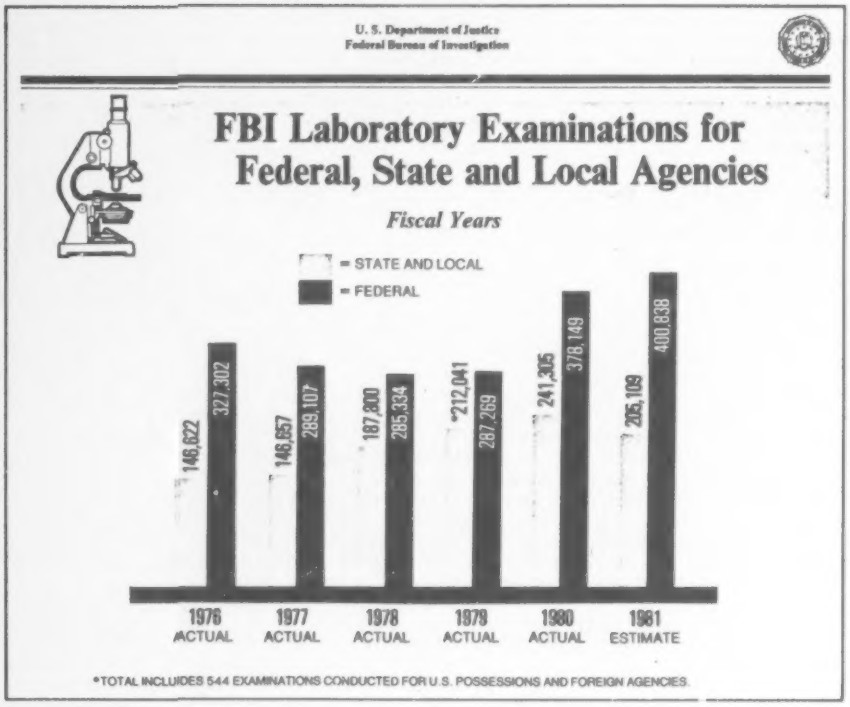
CURRENT FBI LABORATORY RESEARCH AND TRAINING EFFORTS

The FBI Laboratory engages in a full program of training in forensic science disciplines for Federal, state and local law enforcement and crime laboratory personnel. During Fiscal Year 1980, over 900 Federal and 2,200 state and local personnel received training which is geared toward further professionalizing laboratory personnel and reducing the dependence of state and local law enforcement on Federal facilities.

In order to stay abreast of advancing technology, the FBI Laboratory engages in a research program which encompasses the entire range of forensic disciplines and focuses on targets identified through close liaison not only with FBI investigators, but with the entire law enforcement community. Results of this research are shared through publication of the "Crime Laboratory Digest" which is circulated throughtout all law enforcement sectors. Laboratory scientists also prepare articles for various scientific journals. The most notable advances in research during the past year include the sexing of a dried bloodstain, furtherance of a more economical and timesaving technique for identifying stolen gasoline in bulk quantities.

The $4.1 million Forensic Science Research and Training Center being constructed at the FBI Academy, Quantico, Virginia is on schedule and should be completed by Spring, 1981. This facility with its sophisticated instrumentation and equipment will allow the FBI Laboratory to increase research and training significantly.

EXHIBIT No. 42



FINGERPRINT IDENTIFICATION

THE FBI STILL MAINTAINS THE LARGEST FINGERPRINT STORAGE AND RETRIEVAL SYSTEM IN THE COUNTRY. LATENT FINGERPRINT EXAMINATIONS AND EXPERT TESTIMONY ARE ALSO AVAILABLE. UNDER THIS REQUEST THE FINGERPRINT IDENTIFICATION PROGRAM WILL REQUIRE 3,031 POSITIONS AND $63,954,000, AN INCREASE OF $1,275,000 FROM THE PREVIOUS YEAR. IT SHOULD BE NOTED THAT PART-TIME POSITIONS EQUIVALENT TO 129 WORKYEARS HAVE BEEN AUTHORIZED FOR THIS PROGRAM. THE FOLLOWING EXHIBITS RELATE TO FBI FINGERPRINT OPERATIONS:

EXHIBIT No. 43

FINGERPRINT OPERATIONS

Since 1924, the FBI's Identification Divison has served as the national repository and clearinghouse for fingerprint records and as such furnishes identification and arrest record services to over 17,300 agencies which are authorized to utilize the Divison's services. By submitting fingerprint record requests to the Identification Division's "locator" or "index" of nationwide arrest activity, agencies avoid making costly inquiries of all other states. The mobility of today's criminal necessitates prompt, efficient, and complete record checks, which can only be accomplished by

use of a central point of inquiry provided by the Identification Division.

When created by an Act of Congress in 1924, the Identification Division files contained approximately 810,000 fingerprint records received from the National Bureau of Criminal Identification and the Leavenworth Penitentiary. As of October 31, 1980, the division contained over 173 million fingerprint cards of which over 78 million reflect arrest data for approximately 20 million individuals. The remaining 93 million fingerprint cards represent over 44 million persons who have been fingerprinted in connection with employment in Federal Government agencies, military service, alien registration, and personal identification.

The great amount of reliance placed upon the Identification Division's services is evidenced by the Division's continuous enormous workload. During each workday of fiscal year 1980, the Division received an average of 43,691 requests for services of which 25,120 were fingerprint cards and 18,570 were requests for name checks, identification records, and other types of correspondence, including requests to expunge or purge arrest data previously submitted. Over 17,300 agencies utilize the services of the Identification Division. Their access to the Division's records is governed by Federal statues, regulations, and executive orders. Authorized users include: Federal, state, and local criminal justice agencies; Federal, state, and local government agencies and officials for employment and licensing purposes; certain foreign goverments for law enforcement purposes; and banking and securities institutions for employee security purposes.

The following services are provided by the Identification Division: fingerprint card identification; arrest recordkeeping; posting of wanted and probation/parole notices; the examination of physical evidence and crime scenes to detect latent fingerprints and providing expert court testimony as to the results; fingerprint training; and the identification of amnesia victims and unknown deceased persons.

Included in the major accomplishments of the Identification Division for fiscal year 1980 were the following: the receipt of over 6.3 million fingerprint cards and over 4.6 million other pieces of correspondence; the identification of 17,330 fugitives by their fingerprints; the implementation of computerized name searching of automated arrest records; the performance of 23,040 latent fingerprint examinations, some of which involved advanced laser equipment technology; and the furnishing of assistance in the identification of deceased victims of two disasters. The FBI Disaster Squad traveled to Warsaw, Poland, to assist in the identification of Americans (including members of the U. S. Amateur Athletic Union Boxing Team) who lost their lives in the crash of Polish airliner on March 14, 1980, as well as to Washington State to assist in the identification of victims of the May 18, 1980, volcanic eruption of Mount St. Helens. Fiscal year 1980 was also the last year of a three-year effort to convert to computer readable form, the fingerprint data on the cards of individuals born on or after January 1, 1929, contained in the criminal fingerprint file. This approximate 900 work-year effort was completed on schedule with the conversion of over 13.5 million fingerprint cards, thus making this data available for future automatic fingerprint searching procedures.

EXHIBIT No. 44

IDENTIFICATION DIVISION ACCOMPLISHMENTS

The Identification Division's workloads continued at high levels during fiscal year 1980. The following table lists some of the workloads and production accomplishments of the Division in fiscal year 1980:

Type of Accomplishment	Number
Fingerprint cards received	6,330,274
Correspondence, forms and name checks received	4,679,742
Wanted and probation/parole notices in file	212,269
Fugitives identified by fingerprints	17,330
Latent fingerprint cases handled	23,040
Suspects identified from latent fingerprint examinations	3,994
Federal, state and local court appearances made by Fingerprint Examiners	342
Sentences resulting from court proceedings:	
Prison terms (Years)	2,011
Life sentences	22
Expungement and purge requests processed	400,665
Nonserious offense entries deleted from arrest records	407,601

EXHIBIT No. 45

AUTOMATED IDENTIFICATION DIVISION SYSTEM (AIDS)

The Automated Identification Division System (AIDS) is the name given to the FBI's project to automate the fingerprint work operations carried on in its Identification Division. Because of the enormity of the undertaking, AIDS is being implemented in phases (called AIDS-I, AIDS-II, and AIDS-III) over a period of several years. Significant progress has been made to date as indicated below:

AIDS-I

This phase of automation provided for the building of a computerized file of identification and arrest data on first offenders, the generation of name index cards for the Division's manual criminal name indices, and the generation of "No Record" or arrest record responses to fingerprint cards, name checks, and other types of inquiries. AIDS-I became operational on August 30, 1973, and since that time over 5 million first offender records have been entered into the system and kept updated with subsequent arrest and related data. On October 18, 1979, AIDS-I was phased over to AIDS-II.

AIDS-II

As indicated above, AIDS-II took over AIDS-I operations as of October 18, 1979. This phase of automation

provides for enhanced AIDS-I capabilities (e.g., allows for "on-line" processing versus previous "batch" processing) and the addition of computerized name searching capability in place of the generation of name index cards for the manual criminal name indices. Computerized name searching of the automated arrest record file was initiated on October 29, 1979.

AIDS-III

This phase of automation is still under development. It is the most difficult and complex phase since it has required the invention and development of special purpoase computer equipment and computer programs to duplicate the remarkable faculties of the human eye and brain in examining fingerprints. As a result of a research project initiated in 1967, automatic fingerprint reader equipment was developed which can "read" fingerprints and record their identifying characteristics. The National Bureau of Standards, in cooperation with the FBI, has developed computer programs which can compare and match the fingerprint data generated by the automatic fingerprint readers. Five such readers have been used to computerize the fingerprints appearing on fingerprint cards relating to arrestees born on or since January 1, 1929. Over 13.5 million arrest fingerprint cards have been converted as a part of a three-year 900 work-year effort which was completed by September 30, 1980. A pilot AIDS-II project has been in operation since May 1979, to demonstrate and evaluate AIDS-III capabilities. The pilot project utilizes the automatic fingerprint readers, prototype fingerprint matching equipment, and semi-automatic fingerprint classification procedures. The project has been so successful in demonstrating the ability to perform automated technical searches in the fingerprint file that, as of October 3, 1980, manual technical searches were discontinued and replaced by automated searches in one of 23 searching units. The Jet Propulsion Laboratory (JPL) is currently under contract to study the technical, economic and operational feasibility of AIDS-III, its estimated cost, and the time frame for completing the system. Future budget requests for funds to implement AIDS-III will be based on the results of the JPL study.

EXHIBIT No. 46

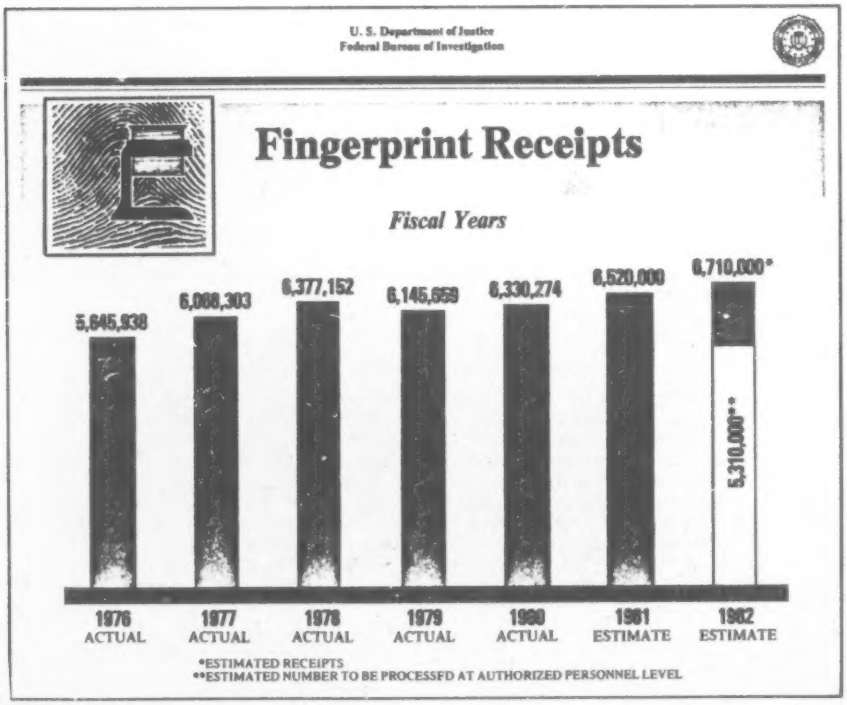
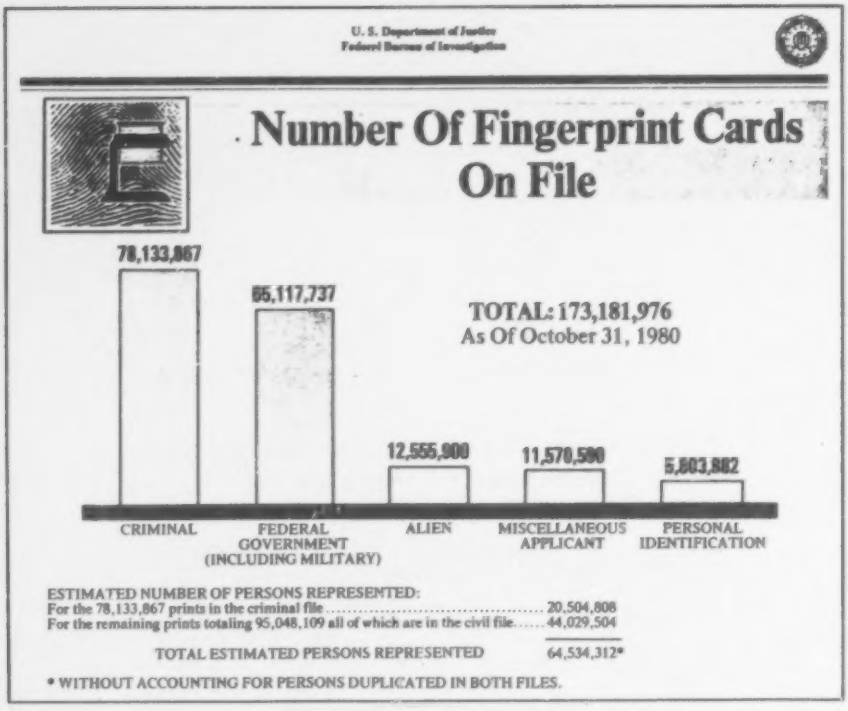


EXHIBIT No. 47


U. S. Department of Justice
Federal Bureau of Investigation
Number Of Fingerprint Cards On File
78,133,867
65,117,737
12,555,900
11,570,590
5,803,882
TOTAL: 173,181,976
As Of October 31, 1980
CRIMINAL
FEDERAL GOVERNMENT (INCLUDING MILITARY)
ALIEN
MISCELLANEOUS APPLICANT
PERSONAL IDENTIFICATION
ESTIMATED NUMBER OF PERSONS REPRESENTED:
For the 78,133,867 prints in the criminal file 20,504,808
For the remaining prints totaling 95,048,109 all of which are in the civil file 44,029,504
TOTAL ESTIMATED PERSONS REPRESENTED 64,534,312*
* WITHOUT ACCOUNTING FOR PERSONS DUPLICATED IN BOTH FILES.

AUTOMATIC DATA PROCESSING AND TELECOMMUNICATIONS

BY BEING RESPONSIVE TO THE FBI'S INFORMATION PROCESSING NEEDS, THE AUTOMATED DATA PROCESSING AND TELECOMMUNICATIONS PROGRAM ALLOWS THE BUREAU TO PLACE GREATER EMPHASIS ON THE INVESTIGATION OF ORGANIZED CRIME, WHITE-COLLAR CRIME AND FOREIGN COUNTERINTELLIGENCE MATTERS. A TOTAL OF $47,568,000 AND 406 POSITIONS IS REQUESTED FOR THIS SUPPORT. THIS INCLUDES A $9,012,000 INCREASE FOR OPERATION OF THE FBI HEADQUARTERS COMPUTER CENTER, IMPLEMENTATION OF THE NORTHEAST REGIONAL COMPUTER CENTER, THE INTEGRATION OF INFORMATION SYSTEMS INTO ONE NETWORK, AND CONTINUED DEVELOPMENT AND IMPLEMENTATION OF AN ADMINISTRATIVE SUPPORT SYSTEM. UTILIZATION OF THESE RESOURCES IS FURTHER EXPLAINED IN THE EXHIBITS WHICH FOLLOW:

EXHIBIT No. 48

AUTOMATIC DATA PROCESSING AND TELECOMMUNICATIONS PROGRAM (ADPT)

The ADPT program provides the FBI with information collection, storage, retrieval, and dissemination capabilities through the use of automatic data processing, telecommunications,

and word-processing resources. The FBI has followed a policy of using ADPT resources to directly support investigative as well as administrative requirements wherever it would achieve greater efficiency. In addition to meeting its own vital mission-oriented information processing requirements , the FBI also dedicates a significant amount of its data processing resources to support certain related needs in the entire criminal justice community. The investigative , administrative , and law enforcement support systems are managed centrally to make the most efficient use of the FBI's computer resources.

EXHIBIT No. 49

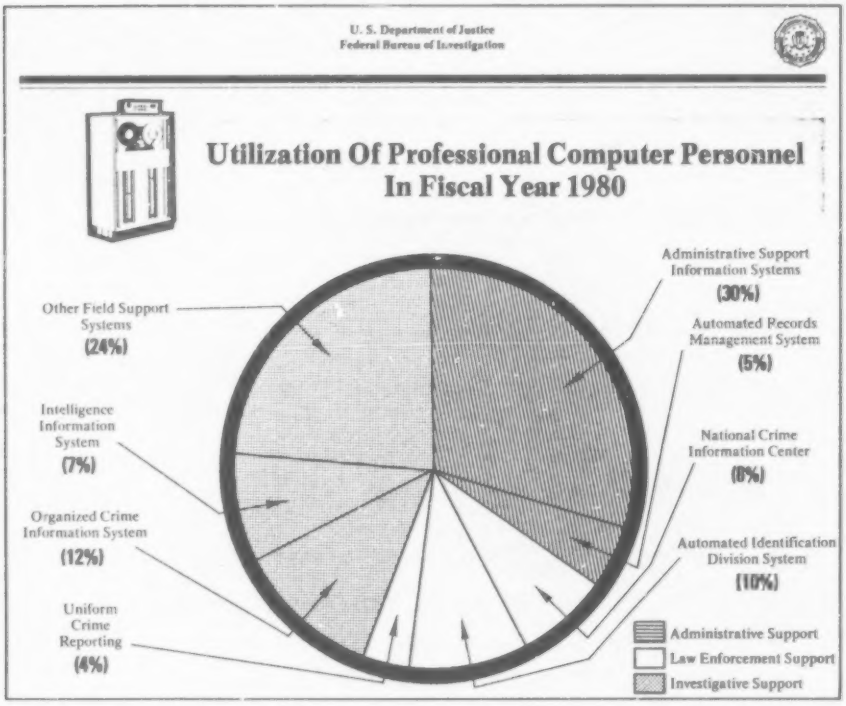
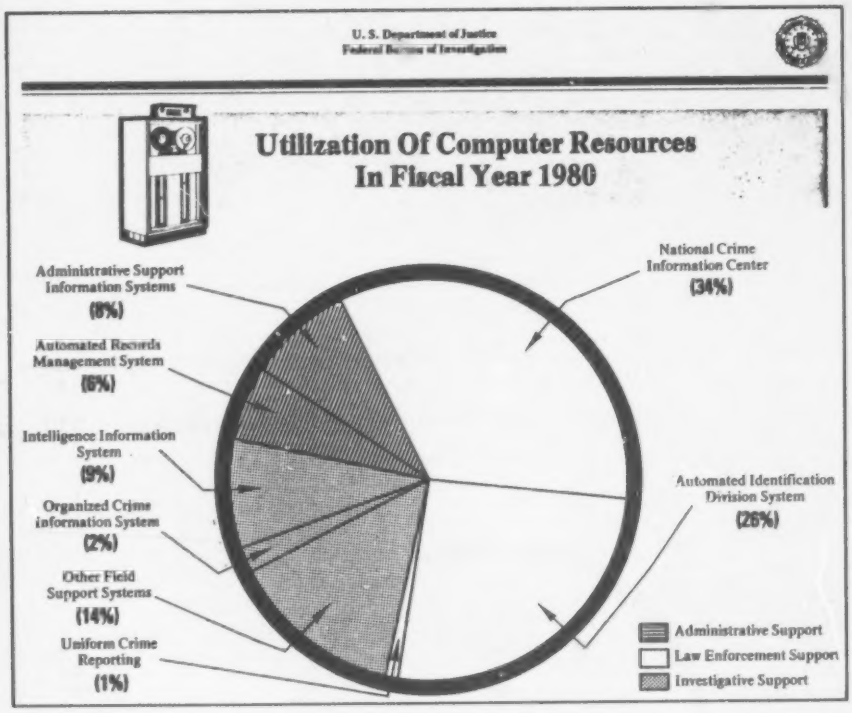

U. S. Department of Justice
Federal Bureau of Investigation
Utilization Of Professional Computer Personnel
In Fiscal Year 1980
Administrative Support Information Systems (30%)
Automated Records Management System (5%)
National Crime Information Center (8%)
Automated Identification Division System (10%)
Other Field Support Systems (24%)
Intelligence Information System (7%)
Organized Crime Information System (12%)
Uniform Crime Reporting (4%)
Administrative Support
Law Enforcement Support
Investigative Support

EXHIBIT No. 50


U. S. Department of Justice
Federal Bureau of Investigation
Utilization Of Computer Resources
In Fiscal Year 1980
Administrative Support Information Systems (8%)
Automated Records Management System (6%)
Intelligence Information System (9%)
Organized Crime Information System (2%)
Other Field Support Systems (14%)
Uniform Crime Reporting (1%)
National Crime Information Center (34%)
Automated Identification Division System (26%)
Administrative Support
Law Enforcement Support
Investigative Support

CRIMINAL JUSTICE DATA AND STATISTICS SERVICES

THE FBI COMPILES AND PUBLISHES THE UNIFORM CRIME REPORT, WHICH PROVIDES THE INCIDENCE OF REPORTED CRIMES THROUGHOUT THE UNITED STATES AS SUBMITTED BY APPROXIMATELY 15,000 INDIVIDUAL AGENCIES. THE FBI ALSO MAINTAINS THE NATIONAL CRIME INFORMATION CENTER WHICH PROVIDES INFORMATION ON STOLEN PROPERTY, WANTED PERSONS, MISSING PERSONS, AND CRIMINAL HISTORIES TO CRIMINAL JUSTICE AGENCIES. TO CONTINUE THESE FUNCTIONS, $5,290,000 AND 196 POSITIONS WILL BE REQUIRED. THE FOLLOWING EXHIBITS WILL FURTHER DESCRIBE THIS PROGRAM AS WELL AS DEPICT THE PERCENTAGE CHANGE OF CRIME IN THE UNITED STATES BETWEEN CALENDAR YEARS 1975 AND 1979:

EXHIBIT No. 51

NATIONAL CRIME INFORMATION CENTER (NCIC)

The NCIC is a nationwide criminal justice information teleprocessing network which provides documented criminal information to the entire criminal justice community. NCIC contains records on stolen property, i.e., vehicles, license plates, guns, securities, boats and serialized articles; wanted persons for whom arrest warrants are outstanding; criminal

histories on persons arrested for serious offenses; and missing persons meeting specific entry criteria. An NCIC Advisory Policy Board, made up of Federal, state, and local criminal justice officials, furnishes advice to the FBI Director on policy matters concerning NCIC operations and thereby allows the users a voice in the overall management of the system. The users of NCIC, which include the criminal justice agencies in the 50 states, all Federal law enforcement agencies, the Royal Canadian Mounted Police, and the Police of the Commonwealth of Puerto Rico, obtain these services on a non-reimbursable basis.

EXHIBIT No. 52

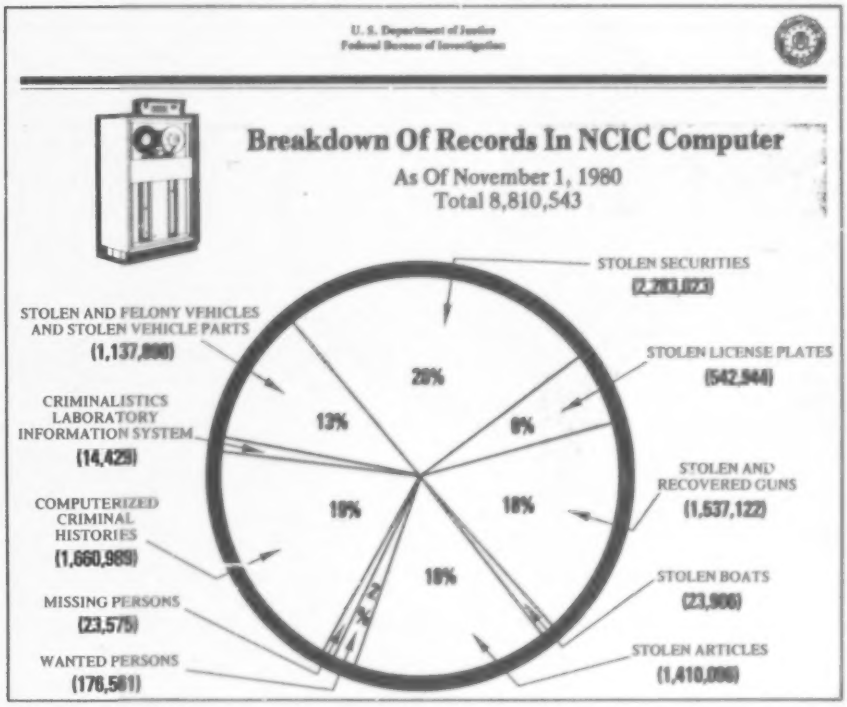


EXHIBIT No. 53

UNIFORM CRIME REPORTING

The Uniform Crime Reporting Program was conceived and implemented by our Nation's law enforcement agencies 50 years ago. Two basic needs were recognized. First, it was believed the American people deserved an accounting of the extent and nature of criminal activity. Second, law enforcement leaders needed an administrative tool to better manage their departments.

On a monthly basis, this Program collects statistical data concerning the incidence of criminal acts from over 15,000 individual law enforcement agencies nationwide. Data collection is grouped according to certain basic types of offenses, which are murder, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson. Additionally, statistical information on arrests, property loss, and other factors relevant to criminal activity is aggregated. Analyzed data are published in several formats such as:

1. Semiannual releases indicating crime trend information in each of eight categories of crime.

2. Annual publication of "Crime in the United States."

3. Annual publication of "Assaults on Federal Officers."

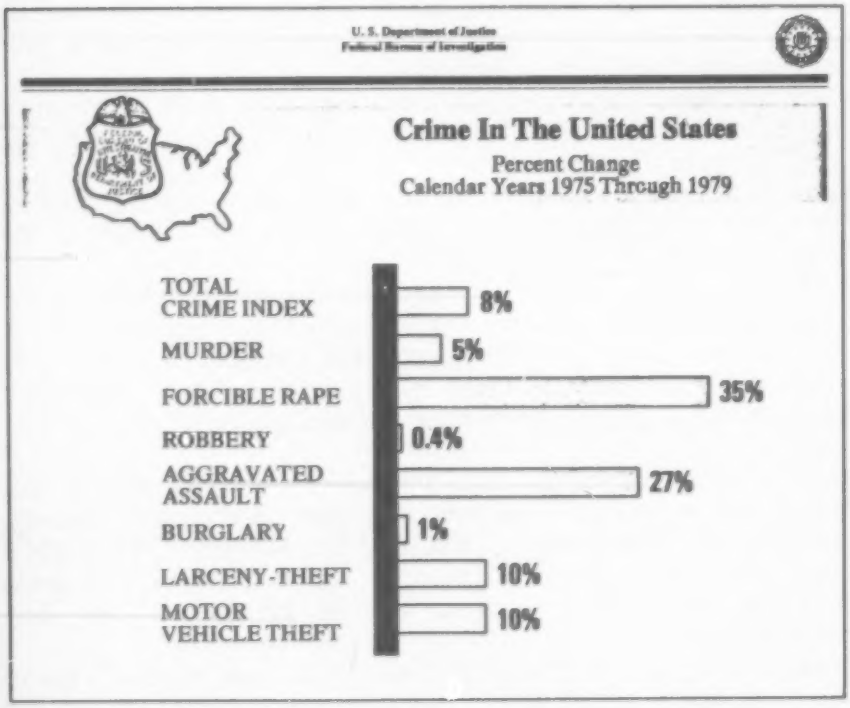
4. Annual and monthly releases concerning bombing incidents in the United States.

5. Annual and monthly releases of law enforcement officers killed.

When first implemented, the Uniform Crime Reporting Program was used on a relatively limited basis. Now, however, this program is relied upon by many people and organizations from widely varying professions. Scholars depend upon this data to better understand the seriousness of crime and its effect on our society. Legislators rely upon it for direction in developing necessary legislation to more effectively combat crime. Administrators from all levels of the criminal justice community use information about the incidence of crime to plan their activities so as to have the maximum impact on the criminal element.

Substantial cooperative efforts at all levels of the law enforcement community are necessary in gathering the data upon which the Uniform Crime Reporting Program depends. The benefits derived from the program are indeed significant and have resulted in an increased understanding of the crime problem which confronts the citizenry of this country.

EXHIBIT No. 54



Senator WEICKER. My first question, which I also posed to the Attorney General yesterday relates to recent news articles that have made mention of the redrafting of the Executive order which governs the way our intelligence agencies operate.

You certainly have appeared before this committee long enough to know my rather strong views relating to the kind of investigative techniques which used to be employed by your agency and also the CIA. I was wondering, did you or any other official of the Bureau participate in redrafting the Executive order governing intelligence agency operations in the United States?

Mr. WEBSTER. The redrafting is still in very much of a draft process. I have seen a number of draft proposals, have discussed some aspects of those with the Attorney General, and am aware of some of the efforts advanced on a Christmas tree basis to suggest various ways by various agencies to increase their effectiveness, particularly in the international terrorists area.

I particularly paid attention to the historical role of the FBI in counterintelligence activities in the United States, and made a point of inquiring of our own people whether the definition of coordination would change. Coordination in short means veto to me, and I watch for that central control to make sure we always have the right to prevent any activity in this country in the counterintelligence area that transgresses upon our responsibilities under established policies.

But these have been largely drafts. We haven't been exposed to policy considerations. I call it the Christmas tree draft.

Senator WEICKER. The drafts that have been mentioned in the press seem to indicate a minimizing of the Attorney General's role in approving these types of operations.

Don't you think it's important for any plan that is devised, to personally involve the Attorney General or the Director of the FBI, in the final decision?

Mr. WEBSTER. Well, I do, Mr. Chairman. The FBI is subject to the policy direction of the Attorney General. So that, regardless of the schematic for presenting these issues upstream, our policies are going to be controlled by the Attorney General, and I think that it's important that the Attorney General's perspective on intelligence matters be fully represented.

Senator WEICKER. Obviously I say this looking at the history of this business. When we were in the course of investigating these matters, nobody knew they were going on. Not even the Attorney General knew they were going on. Apparently the only man that knew about these things in the whole FBI was Agent Sullivan. He was the only one. Nobody else knew.

I think a better system can be devised. I just hope we don't get to the point where this is left to the judgment of people down the line purposefully, so that if discovery comes everybody can wash their hands of it at the highest levels.

Mr. WEBSTER. If that was ever a policy in the past, it is not the policy at present.

ROLE OF CIA IN DOMESTIC INTELLIGENCE GATHERING

Senator WEICKER. Do you think the collection of intelligence information within the United States by the CIA is necessary or desirable?

Mr. WEBSTER. I think that there are occasions when the interface between the work of the CIA, in connection with its international responsibility, and the work of the FBI, with its counterintelligence responsibilities within the United States, can be improved. But there is a great difference between making information available to the FBI, and separate and independent activities of the CIA within the United States.

I think the Attorney General has an important role to play, as does the FBI, in controlling the extent of activities by other organizations inside the United States, because of the likelihood that we would be dealing, as we have, with the United States, and the obligation to protect the rights of its citizens.

Senator WEICKER. Since 1976 the FBI has been conducting domestic security activities under the guidelines written by Attorney General Levi. Are you conducting your terrorism program under these guidelines? Do you believe these guidelines have hampered your mission?

Mr. WEBSTER. Our terrorist activities are under two sets of guidelines. One is the domestic guidelines for domestic terrorism, and the other set is the international terrorist activities that are managed under foreign intelligence guidelines also promulgated by the Attorney General.

My sense of our activities is that we have been effective under existing guidelines. There is always the opportunity for improvement in guidelines; that is what a guideline is all about, as I understand it. It has the advantage over a statute in that if it needs to be strengthened or needs to be relaxed, you can go about that business in an orderly way without taking years.

I have presently a FBI working group looking into both sets of guidelines to see if there is need for improvement. Of course, any such changes will be processed through the Attorney General, and the appropriate committees of the Congress will be informed about it.

The short answer to your question is that we have not found ourselves unduly restricted by the domestic security guidelines with respect to terrorist activities. In fact, the guidelines as a whole give strength and confidence to the activities because our agents are more convinced, as a result of those guidelines, that they will not be second-guessed and subjected to discipline or prosecution or law suits for having acted without the proper guidance from the Attorney General through those guidelines.

FBI CHARTER

Senator WEICKER. Do you plan to resubmit the FBI charter to Congress?

Mr. WEBSTER. I am not certain of the process, but the charter that was in the last Congress is the charter that has the endorsement of the FBI. I would certainly hope it will be reintroduced and that it will be adopted in substantially the same form.

PROGRAM INCREASES

Senator WEICKER. The FBI is one of the few agencies receiving a real increase. Positions are increasing by 115 and the budget request is $56.7 million more for 1982 than for 1981. How are these increases in personnel distributed?

Mr. WEBSTER. We have five programs. In criminal security and other investigations there is an increase of 51; no increase in coordination of investigations; a total increase of 45 in the areas of investigative support, training, laboratory, ADP and telecommunications, records management, technical field support and equipment; an addition of 10 for State and local assistance, primarily in the Identification Division and one possibly for the laboratory and one for general law enforcement training. The fifth program is program direction. We have an increase of 9 in that area.

TERRORISM REDUCTION

Senator WEICKER. The budget reflects a reduction of 21 positions and $286,000 in your terrorism program. The "Budget in Brief" describes this reduction as reflecting the administration's decision to reduce Federal employment. In fact, the reduction was also contemplated in the January budget.

The earlier justification stated that if terrorist activity continues at its current level, the reduction would necessitate a reorganization and redirection of remaining resources. When you say this decision may require assistance from other law enforcement agencies, what do you mean? Are you understaffed? If so, what other Federal law enforcement agencies are likely to be or have been called upon for assistance?

Mr. WEBSTER. Maybe I can answer that by working my way backwards a little bit. We were given some additional terrorist positions in the last budget. We came up with a shortfall of very few positions. I don't have it right before me. We underspent in the domestic field, even though we had significant increases in the international field.

Our funding for international terrorism is charged against our foreign counterintelligence budget, which is not specifically identified in public hearings. The number of terrorist incidents actually went down in 1980 from about 43 or 44 to 29. The year before that as I recall it was around 52, and then it had been around 100 for the previous 2 or 3 years.

So we have been able to have a substantial impact in reducing the number of terrorist incidents. However, the number of investigative matters involving terrorism has increased. I think you could reasonably draw the inference that our more successful attention to these activities has resulted in apprehension and conviction of some of those responsible for multiple terrorist incidents and probably accounts for the reduction.

This is a long-winded way of saying that the remaining terrorist events are more serious in scope, more life-threatening in nature, and require additional resources to pursue. The focus on the dollar amounts here is a combination of our having experienced a shortfall in the previous budget year and also the recognition that we have constraints on our budget applications.

I have been on record numerous times, Mr. Chairman, as saying that we will always find the money for terrorist activity. It goes right to the top of our budget. There will be no calling off the troops in the event we need this money. But I think it's a reasonably realistic request based upon our previous experience and the current level of terrorist activity.

DISTINCTION BETWEEN DOMESTIC AND INTERNATIONAL TERRORISM

Senator WEICKER. Well, first of all, where do you draw the line between domestic terrorism and international terrorism?

Mr. WEBSTER. Well, the easiest way to express it is if the terrorist activity is controlled from outside the United States or is international in scope, that is if it transcends national borders and is terrorist activity based in this country but taking place abroad, that provides us with a basis for investigation just as readily as a Libyan activity or Iranian activity in this country.

We had quite a bit of that, as you know, during the past year involving requirements to remove Iranian diplomats. We removed some Libyan diplomats. All of those were preceded by intensive investigations that formed the basis for that action, all conducted under foreign intelligence guidelines.

We have had a resurgence of Armenian threats. These date back to 1950 against the Turks. There are the beginnings of some problems in the Philippines, expressed in terrorist activity in the United States. So we are getting a number of these foreign based terrorists coming over here.

We have our major terrorist groups. The ones that create the most problem, of course, have been the Puerto Rican Independence groups and the Cuban Nationalist movement.

Senator WEICKER. At your convenience sometime in the next several weeks, we may want to schedule an executive session with the committee to go into depth on these matters?

Mr. WEBSTER. We'd be glad to.

TERRORISM REDUCTION VERSUS ECONOMIC RECOVERY PROGRAM

Senator WEICKER. What bothers me is, in your statement on the reduction, you say this reduction reflects the administration's decision to reduce Federal employment in the present program for economic recovery. I notice that sentence doesn't appear very often in the other portions of the budget, I gather you are somewhat uneasy with this particular reduction. Would that be a correct statement?

Mr. WEBSTER. Well——

Senator WEICKER. And if I were sitting on the Budget Committee I would be concerned with the bottom line dollar figure under the President's economic recovery program.

My job is to look into the substance of what is being presented to us. When I see a statement like that as being the reason for the reduction, it really doesn't relate to my particular job. That is why I am pursuing this question.

Mr. WEBSTER. I suppose in an atmosphere where the ante seems to be going up for terrorism and a number of things we have had to cope

with, such as the Pan American games and the Olympic games at Lake Placid where the potential for trouble is tremendous and the costs of preparing for it are large, the amount needed can shift radically over night.

We did burn ahead of what we anticipated in total terrorist activity. At the same time there was a shortfall in the domestic activity. I am reasonably comfortable with the numbers that were allocated to us in the terrorist field, with the caveat that we would always find the dollars there. I would rather not have them sitting there, and be not spent, when we need them in so many other places. I would rather instead go on with an adequate, realistic budget with the knowledge that we will reallocate money from other sources should we need it.

Senator WEICKER. Is not an effective antiterrorist program an ongoing performance in the sense of having our intelligence chasing people down after they have blown up the car or whatever it is?

Mr. WEBSTER. That is right. There has been no pullback on legitimate intelligence gathering. As you know I don't support just gathering intelligence for the sake of intelligence. The guidelines preclude that. There has to be a predicate, and the predicate is an organization or individuals planning or engaged in acts of force or violence directed against the United States, the Constitution of the United States, or civil rights. Unless we have that kind of predicate, we cannot, and indeed should not conduct investigations. We do conduct inquiries, but not investigations.

KU KLUX KLAN ACTIVITY

Senator WEICKER. Does the Ku Klux Klan fall under this category of events, or those type of activities?

Mr. WEBSTER. The Ku Klux Klan is a loosely structured series of klans with two or three national organizations. Any such group that would engage in that type of activity, or even a conspiracy, would be the subject of an investigation. In fact we have at any given time two or three such organizations under investigation, as well as a number of individuals.

Senator WEICKER. I suppose, again to express my concern, I see the following isolated events. But nevertheless all converging to create a problem I don't conceive as being lessened. I see various groups, you mentioned the Cubans and Puerto Ricans, you may well now expand that to include other countries in Central and South America, starting to use the United States as a base of operation. And there are two points of view among persons from any given country.

I see anti-Semitism in the northeast by types that purport to be members of the klan on the increase, and I see klan activity outside of traditional southern areas which have been associated with the klan.

And I just don't see, at least from what I read, where this coincides with a diminishing of domestic terrorism or international terrorism. Are any of these positions vacant now?

Mr. WEBSTER. I am informed that we are still underburning. So I guess if you measured——

Senator WEICKER. What is underburning?

Mr. WEBSTER. Positions are a function of time. In other words the work year equals a certain number of hours. We are underburning in

relation to our budget as we go at the present time in the 1981 budget slightly.

I think I see what is concerning you, Mr. Chairman, and maybe I could state it this way. The dollars do not control our activity in the terrorist field. The extent of the activity as we are able to detect it and legitimately investigate it controls the dollars. So it's not like saying we can't go into that because we don't have the money.

As we find any evidence or indication of terrorist activity, that becomes the top of our priority list, and we are spending money creating the resources to develop the information. But the expenditure in that activity has simply not exceeded the budget that is there.

Now in foreign counterintelligence, we can't discuss that publicly here. There have been provisions made for enhancement of our FCI budget, with the ability to increase our international terrorist program, and that is in the budget. So we do expect to be able to fully fund any activity in that area.

POSITIONS ALLOCATED TO TERRORIST PROGRAM

Senator WEICKER. One last question then. If you are in good shape now, and maybe a little bit better than good in this area, I get back to my original question. A cutback of 21 positions nevertheless drastically alters the situation. Where are you then going to be if you extrapolate these figures?

Mr. WEBSTER. Well, if our assessment is wrong then we have to draw from other places within our budget. But we will not retrench our terrorist investigative effort simply because of limitations of funds. I can assure you of that.

Senator WEICKER. Again, one last point. It just seems to me that there is a great deal of money saved in the long run if somebody doesn't get kidnapped, if the plane is not hijacked, if the building is not taken over.

Mr. WEBSTER. I agree with everything you are saying.

Senator WEICKER. I think they are two different things. The cost to the FBI once the act has taken place, and the cost to the FBI when it has not.

Mr. WEBSTER. The worst case situation is the one you have publicly and correctly criticized, and that is to have people out there nosing around in private organizations to see if by any chance something is going wrong. Of course we don't have unlimited resources to make domestic security investigations. We don't want to go back to that.

It's a waste of our resources to put people onto school boards and see whether somebody might be thinking about something they shouldn't be thinking about. On the other hand, we are dedicating every bit of resources that can be properly applied in any area where we have a legitimate investigative interest based on terrorism. And thus far we still underburn on the domestic security allowances. But I can assure you that if that situation changes in any way, we will keep right on pouring the money and resources in.

We have had some pretty good successes. The FALN group captured in Chicago is probably the hardcore of the FALN. There were something like 11 arrests of major bombers in New York.

Senator WEICKER. Did you resolve the case of the Cuban diplomat who was murdered in New York?

Mr. WEBSTER. Not yet. That is an ongoing investigation.

INVOLVEMENT IN ATLANTA

Senator WEICKER. Is the Bureau involved in the present efforts by the Federal Government vis-a-vis the problem in Atlanta?

Mr. WEBSTER. Very much so. When we say additional efforts, I am not sure. We got in almost at the beginning. As soon as the city of Atlanta Police Department had identified its own problem—that there was something unusual about the disappearance of children, many of whom had not been reported missing for several months after they had disappeared—as soon as we knew that, we began participating with liaison.

I personally visited Atlanta, talked to the mayor, and talked to the commissioner of police. We now have 30 special agents and there were about 26 agents for several months down there working on this case, compared with about 35 from the Atlanta police force. So we have been almost matching them in effort. We have been running our own show, cooperating with them, and have made substantial progress.

I wish I could say we had the thing under control. We don't. We have supplied laboratory assistance, scientific assistance. We have assisted them in preparing visual analysis techniques for bringing large amounts of data together and making sense out of it.

I think that the more recent public statements down there reflect Atlanta's recognition of the efforts of the FBI, on a very tenuous jurisdiction. We are there on a kidnaping theory, yet all but two of the missing children have been located within the confines of Georgia and, there have been no extortion demands.

But I think our investigative effort is justified. It's a significant national problem at the present time. We intend to continue to cooperate in every way possible.

Senator WEICKER. Are the amounts required for your activity in that area reflected in this budget or is a supplemental going to be required?

Mr. WEBSTER. We have no present plans for supplemental requests. We are absorbing costs just as we have in other situations, as in Buffalo, as in the Jordan shooting, as in other situations.

INVESTIGATION IN THE VIRGIN ISLANDS

Senator WEICKER. And then one last question. Is your work done with respect to the supplemental assistance that you gave to the Virgin Islands the past year?

Mr. WEBSTER. Yes; we sent 13 agents down and solved a number of their local murders. Incidentally, I asked that two of those who had homicide police experience before they became Federal agents be assigned to St. Croix. They were sent down quietly. So we have some real experts there.

STATE AND LOCAL LAW ENFORCEMENT TRAINING

Senator WEICKER. I was wondering what the followup occurred in that regard. The problem in St. Croix, at least in my talks to people down there, was the inability of local law enforcement to follow through on an investigation. They would start it; but, it would fall apart. Have they requested assistance from the Bureau in training of their own personnel? It seems to me in the final analysis that is what they really need.

Mr. WEBSTER. They have requested trainin' and we have offered to provide it to the extent funds are available to do so. We increased the number of resident agents in the Virgin Islands who are under the direction and management of our San Juan office. San Juan has been paying particular attention to it.

I talked to the Attorney General, the Governor, and others down there. You put your finger on an area that comes very close to home to me—is the role of the FBI in dealing with the problems of violent crime which is within the jurisdiction of local authorities. Recognizing the limitations of Federal jurisdiction, we nonetheless have a very important role in training State and local law enforcement officers throughout the United States.

Every year we train 1,000 of the very best law enforcement officers in our National Academy. One out of seven graduates of our academy is now the head of a law enforcement agency in the United States. But in addition to that, we reached about 160,000 police officers last year with our police instruction in the field.

We trained special agents to train police officers and to provide training out in the field. We give them the expertise that we develop from ongoing research and experience. With regard to street crimes over which we have no jurisdiction, we are able to help by teaching forensic detection, crime-scene work, interrogation of witnesses, and how to manage an investigation. Mr. Chairman, I try very hard to hold on to those positions to make sure we are not cut back.

With the dismantling of the LEAA, State, and local law enforcement has very little else to turn to at the Federal level besides the FBI training program. There are some minor training programs in some of the other agencies but none compare to the effort and commitment of the FBI.

Senator WEICKER. Is this something we can expand? We used to send our officers to the FBI academy for training, and you are correct, if LEAA is coming off the line, where can they go for training? Is this something we should direct our attention to in terms of additional funding? Has the money to bring them down to the adademy been in your budget?

Mr. WEBSTER. That is right. We have never charged to bring them down. From time to time we have talked about reimbursable training but I have always thought, in the time that I have been here, that that would only result in the people who need it the most not being able to come.

LONG-TERM DECREASE IN FBI TRAINING

Senator WEICKER. What is the item in the 1982 budget for this? Is that up or down?

Mr. WEBSTER. We tend to shrink. In the last 5 years there has been a 52-percent reduction in training.

Mr. GROOVER. There is an increase in one position, State and local training.

Senator WEICKER. What about the dollar amount available for that activity?

Mr. GROOVER. The total dollar amount available for State and local training is $17,287,000, which is an increase from 1981 of $2,051,000.

Senator WEICKER. Has it stayed level as far as the inflation factor is concerned? Well, I tell you, I think with LEAA going down the chute and with certain other aspects of law enforcement assistance being cut back to zero, with the expectation that States are going to pick up the slack, which is highly unlikely assuming various priorities, I wonder what you might do?

What is your feeling on this subject as to possibly some additional funding in this area. Let me ask this question. With this amount of $17 million will you be able to handle the same number of persons from the local law enforcement and State law enforcement agencies that you did last year?

Mr. WEBSTER. Yes.

Senator WEICKER. The same amount, but no increase?

Mr. WEBSTER. That is right.

Senator WEICKER. Well, I may like to have a supplementary comment in regards to this budget item. I think it's something we might want to touch up a bit to the extent of having additional persons come down. Could you handle more?

Mr. WEBSTER. We can handle more in the field if we had the positions available to provide that training. I think we are dealing pretty much with a full house at the academy but our field training could go up.

TRANSFER FROM STATE AND LOCAL ASSISTANCE

Senator WEICKER. Now also as I understand it your 1982 budget proposes to transfer 35 positions from State and local assistance to the counterintelligence program. Is that correct?

Mr. WEBSTER. Yes; it was a hard choice. The transfer reflects the need to increase our intelligence capability, by moving resources to foreign counterintelligence work. We were to have lost those positions entirely, but they salvaged them for us by letting us divert them into the FCI program. So we held on to the total.

The rationale in give-ups, which were reasonably moderate I think in relation to reductions in other agencies of Government, was to take away things in which there was concurrent jurisdiction or which were purely supportive of State and local activity before we accepted reductions in areas in which we had exclusive Federal responsibility. That is why it came out of training. But that doesn't mean training is an area I think can or should be neglected.

Senator WEICKER. Well, I don't blame you for taking care of your own house first. I think that is what happens when the crunch comes. But the problem is that in pulling away from the other Federal programs it has left State and local people. You are making an assumption which may or may not be true, that they are going to pick up the slack out of block grants or State funds. I find this to be a rather risky assumption.

Mr. WEBSTER. We missed some opportunities too. If they build up and proliferate training programs with block grants, we may very well miss the opportunity to maintain an interrelationship between Federal, State, and local organizations that develops out of this type of training. That has a real value.

COMMISSION ON VIOLENT CRIME

Senator WEICKER. Now let me ask you another question related to a comment you made. This business of violent crime, and as I understand it a Commission has been appointed to study the subject of violent crime. I find the two words redundant.

Mr. WEBSTER. You can find violence in most crime, I agree, violence, and corruption.

Senator WEICKER. Absolutely. What do you see as the purpose of this Commission insofar as recommending or doing things that aren't being done at the present time? Are we not to assume you people are doing everything possible vis-a-vis murders, rapes, all the rest?

What is this going to add to the picture aside from giving us a public relations image of what is your everyday job? That is what escapes me.

Mr. WEBSTER. I believe the Attorney General hopes that by bringing a disinterested and respected Commission in to look hard at the law enforcement effort, and the Federal commitment in that effort, they may be able to identify areas that require emphasis or attention, or to spotlight any weaknesses that exist in the system.

We already have, as you have intimated, a substantial commitment to what is commonly called violent crime. We, in addition, provide laboratory assistance for State and local law enforcement throughout the United States. Our laboratory is conceded to be among the best in the world.

Our Fingerprint Identification Division is a central focal point in the Nation for inquiries on matters where fingerprints, both latent and regular inked fingerprints, are utilized in crime detection. And the National Crime Information Center—NCIC—which we manage, and which is the basis for law enforcement officers checking on automobiles, fugitives, and stolen property, currently receives about 335,000 transactions every day.

So we have a heavy commitment in support of the groups that have primary responsibility for so-called street crime. There is a Federal role in kidnaping, hijacking, terrorism, and all of these involve a heavy commitment.

Senator WEICKER. I suppose here again my concern is the words really don't match the substantive changes which are being brought about in terms of this budget. The Attorney General went to great lengths yesterday before this panel, and especially relating to Senator

Hollings' questions, to assure the fact this was still principally a matter for State and local law enforcement. In other words, obviously trying to get away from the fact there was a Federal police force here that was going to attend to this problem of violent crime. He went to great lengths to assure it was still a problem of State and local law enforcement. Yet when we get into this budget, we find out that one Federal role in State and local enforcement has been training and we are letting them out there on their own hook, reducing the traditional assistance.

Mr. WEBSTER. That may well be one of the conclusions this Commission will reach, that there should be more support in this area. I did mention organized crime. That represents a particular Federal role in reaching what transcends State boundaries and requires long-term investigations.

I suppose if I were to make any single comparison between State and local, it would be the factor of staying power. Most departments at the local level are just too busy with things happening every day to maintain staying power on investigations so they go on to the next emergency. So that is a part of the consideration.

I can't predict what the Commission will ultimately find.

BUDGET REDUCTIONS—FEDERAL, STATE, AND LOCAL

Senator WEICKER. You think the cop on the beat in New York or Chicago or Los Angeles feels that you have to have a blue ribbon committee to tell him about violent crime? I'm sure he has to deal with it day in and day out. What bothers me is that we are cutting back on these resources available to him.

One of the problems I have with the budget, everything the Federal Government does is wrong. I am sure we make mistakes like anybody else does but invariably these programs, LEAA, for instance, came to pass because there was a well-established need for assistance to State and local law enforcement agencies, both in terms of dollars and expertise.

There is no question about the fact for years. When I started out my political career in the early 1960's the only avenue for State and local level training assistance was the Federal Bureau of Investigation and I am glad it's still ongoing.

I find all this tough rhetoric very well and good, but I am going to tell you, you know as well as I do it does cost money and it does require a commitment in terms of dollars and cents to bring about the proper programs and proper people and have them available to law enforcement at the State and local level. I am all for your panel, I hope it works out fine. But I have a strange feeling before we are all through there is just no getting around the dollars and cents associated with licking violent crime.

Mr. WEBSTER. It's a question of resources and the willingness to commit it, unquestionably. We have been asked for years to do more and more with less and less and that is a problem we all confront.

I feel very good that the administration's budget has recognized the importance of effective law enforcement to the extent of not cutting us back as other agencies have been cut back.

Senator WEICKER. Well, you are cut back. What is the total amount being requested for this year, $739,013,000? Including your supplemental you are going from $682 million to $739 million, and given inflation, you are level funded.

Mr. WEBSTER. But it's a relative thing. Others are being cut back substantially.

Senator WEICKER. There is no question about that.

Mr. WEBSTER. So we have some reason to be grateful that our relationship to the national security is being recognized here.

But one thought that probably generated this interest in violent crime is the very real fear of crime that has been identified in surveys such as the Figgie report on fear of crime. The country is concerned about street crime. Whether we are concerned enough to spend the money to do something about it is something else again, but there is fear out there.

Senator WEICKER. The problem is very simple, and again at the State and local level. Resources have been dwindling at the local level and as people still get out there and man their schools and their transportation systems and all the other aspects of life, the law enforcement tends to get squeezed further and further. That is what is happening.

I don't think there is any question about the fact the main inhibition against violent activity as I say is that cop on the beat. And that fellow costs money. If you want to get good people you are going to have to pay them.

Mr. WEBSTER. And he has to be properly trained.

CONTROL OF UNDERCOVER OPERATIONS

Senator WEICKER. The budget includes increases in both organized crime, undercover operations, a $500,000 increase and a $300,000 increase, respectively. How are sums targeted for undercover operations and how are these operations controlled?

Mr. WEBSTER. The targeting takes place on the basis of information that we develop through informant sources, including citizens who come forward. This takes place in a wide variety of ways. It might be someone who, on his own, decides to tell us about the inside workings of organized crime. It might be a Lou Peters, a man who dedicated a year and a half of his life to go undercover to help us. As a Cadillac dealer in Lodi, Calif., he helped us convict Joseph Bonnanno.

It might be a street informant that has proved reliable in the past. It might include a person who wants to help himself by helping the Government. Those are the ways in which we select targets. We do not simply decide to go after somebody because we think he is bad or we don't like him or what he says, or because of the political party he belongs to.

In terms of controlling the undercover operation, it's a very, very carefully structured system. We continue to find ways to improve it. We will continue to look for ways to improve it.

But as simply as I can state it to you, these ideas for undercover operations are generated at the squad level. They make a proposal. That proposal has to be approved by the special agent in charge. It's also reviewed by the U.S. attorney in the field where the scenario is pro-

posed. Then the proposal comes to FBI headquarters where it is again reviewed. That is the particular kind of investigation, general property crime, organized crime, and so on.

At each stage if there is something wrong with the plan it's referred back for improvement. It finally reaches the Undercover Operations Review Committee, which I set up to include representatives of the Investigative and Financial Divisions of the Bureau, and three Department of Justice attorneys who represent the organized crime, public integrity, and fraud section. This committee considers the operation from the standpoint of worthiness, cost, whether there are alternative means, personal liability, and any other problems.

We develop a kind of institutional knowledge of the effect of undercover operations. If the proposal is approved, it goes on up to the Assistant Director of the Criminal Investigative Division who reviews it. Higher, more sensitive type investigations of political figures and matters of that kind come to me for approval. Also I consult with the Assistant Attorney General in the Criminal Division, then operations go forward. They are monitored by FBI headquarters, by the Department of Justice, and in the field by the special agent in charge; and the U.S. attorney's strike force.

JUVENILE JUSTICE PROGRAM

Senator WEICKER. Two last questions, Mr. Webster. Again I realize this is not under your agency but again it relates to the withdrawal of the Federal Government and those problems that are particularly attendant to local and State law enforcement.

As you know, the juvenile justice program is on its way out, and again here I think the purpose of that was to pay a few dollars at the outset of a young person's life in the hopes of setting them on the right path, rather than incur all the expenses involved when a young person develops into a hardened criminal.

Do you have any feelings on this subject, as to whether or not this program is worthy? I'd just be interested in your point of view.

Mr. WEBSTER. Mr. Chairman, I don't pretend to be any kind of expert on that subject at all. I think the goals are worthy and it always pays to look and see if the problem was not an exception, but in the implementation of the program.

TAX REFORM ACT

Senator WEICKER. Then one last question, or one last comment, which I will deliver to you, through you to the Bureau. There is a little disagreement here on the Tax Reform Act of 1976 and the use of tax information in the prosecution of cases. Now, as I said to the Attorney General, and I repeat, I fought this battle on the floor of the Senate twice. There were reforms which we put into the law to protect taxpayers' privacy.

It's come to my attention that at least the claim is made by certain of the law enforcement officials that there are those who say this hampers their efforts in terms of law enforcement. My sources tell me that the main potboiler on this is within your agency.

Might I suggest as I did to the Attorney General, I think we all agree that the problem is one of administration, and I think can be resolved administratively between the Bureau, the Internal Revenue Service, and the Attorney General's office? I think the law is a good one. I think it gives you every access to what you need access to, while at the same time recognizing the rights of the individual taxpayer.

You, and I use the editorial "you," have found your champion on the Senate floor in the wee hours of the morning, and have managed to drag forth an amendment to gut that. I don't like to be looking over my shoulder all the time in terms of rectifying whatever problems need to be corrected, and I would hope you would get together and work within the framework of the law and get this matter resolved administratively rather than try to change the law.

Mr. WEBSTER. I appreciate your comments, Mr. Chairman. We are studying it and that would be the first place to start. Only if we couldn't do it administratively would we be justified in asking for a legislative change.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. Are there any further comments you care to make? There will be additional questions submitted to which I will appreciate your response for the record.

If there are no further comments, it was a pleasure having you before us.

Thank you very much.

[The following questions were not asked at the hearing but were submitted to the Bureau for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Equipment and Consultant Reductions

Your supplemental request has been reduced by $546,000 through decreases in consulting services ($46,000) and equipment purchases ($500,000).

What equipment purchases have been affected by this reduction? Specifically, is this office-related machinery which is not essential to law enforcement?

The cut of $500,000 for equipment purchases will be effected by reducing the purchases of field office furniture and equipment by $500,000. This includes chairs, desks, calculators, adding machines, typewriters, and other office-related equipment that has reached the end of its useful life. Although this equipment does not have a direct impact on the FBI's ability to accomplish its law enforcement mission, it nevertheless does provide for continuity of operations. As a result of this reduction, the field office furniture and equipment budgeted for replacement in FY 1982 will be deferred until FY 1983.

For the record, will you provide us with an identification of all proposed consultant studies and management studies which are budgeted for FY 1982 and the amounts budgeted for each?

There are four consulting/management studies budgeted for FY 1982 with a total value of $360,000. These studies are as follows:

1. Administrative Support Information System (ASIS): software conversion study - $150,000

2. Automated Records Management System (ARMS): performance evaluation study with the Federal Computer Performance Evaluation and Simulation Center (FEDSIM) - $60,000

3. Completion of the floor change-out study with FEDSIM - $50,000

4. Field Office Information Management System (FOIMS): study to provide the required expertise and guidance to expand the New York Division FOIMS prototype - $90,000.

The proposed ASIS software conversion study is required in FY 1982 due to the planned floor change-out of the FBIHQ Computer Center. The equipment involved in this mandated floor change-out are the National Advanced Systems (NAS) Model 7000 and the two NAS 5000 computers. With this impending replacement of the presently installed and operational computers, the software currently utilized on these computers will have to be redesigned, rewritten, modified, or otherwise changed to enable execution on the replacement computers. The proposed software conversion study will address the scope of effort required to convert the current software to include required manpower and computer support. Without this proposed study to address the software conversion aspects of the floor change-out, the FBI will not be able to transfer existing software to the replacement computers. The study will be conducted by the Federal Software Conversion Center of the General Services Administration.

The floor change-out study was initiated in FY 1981. The $60,000 requested for FY 1982 will provide the funding necessary to complete the final phase of the study. This final phase will address equipment relocation, floor layout, and other equipment configuration planning and facilities requirements.

The ARMS performance evaluation study will be a comprehensive study to evaluate the productivity and performance of specific subsystems of ARMS. A detailed analysis of the ARMS interactive and batch processing will provide the insight necessary to identify and plan for the system's long-range processing needs and future enhancements. The FBI does not have the required expertise or equipment necessary to conduct this needed study.

The FOIMS project team requires expertise not available from within FBI staff resources to aid and guide in the planning and development, testing, and expansion of the New York Division FOIMS prototype. To aid in the planning required and to insure the full benefits achievable with the expansion of the prototype, expertise is needed in the area of microforms requirements analysis, design, development, and integration of word processing, networking, and software optimization.

Vehicle Replacement Program

You are requesting a sizeable increase--$6.8 million--for technical field support and equipment. Included in this request are 1,460 automobiles - approximately one fourth of the current 5,300 vehicles fleet. Why are you requesting the replacement of 1,328 automotiles in FY 1982?

Because all of these vehicles will exceed mileage portions of the GSA replacement standards of "six years or 60,000 miles, whichever occurs first." (Title 41 CFR Subpart 101-38.902.) Replacement on a six-year basis, while plausible for general-purpose government vehicles, is not reasonable for law enforcement vehicles. The FBI reviews the operating condition of each vehicle and its repair history prior to arriving at a decision to dispose of the vehicle. When a vehicle is scheduled for replacement by the FBI, it is considered unsafe for investigative use and not cost effective to repair. An average FBI vehicle reaches 60,000 miles in 4.4 years of operation.

Last year provision was made for 1,100 cars in the appropriations bill. How many will you actually purchase?

The FBI's appropriation bill for FY 1981 made provision for the purchase of 1,100 automobiles. Management decisions within the FBI made as a result of a 10 percent reduction ordered by President Carter in March 1980 reduced the appropriated funds from $7,156,800 to $4,956,800. This reduction in funds coupled with manufacturers' price increases will allow the FBI to purchase only 680 vehicles. The 680 vehicles comprise only 42 percent of those meeting the GSA replacement standards.

Secure Communications

You are also requesting a sizeable increase for purchases of voice privacy units (from 300 in 1981 to 1,300 in 1982). Is secure communications an increasing problem?

Security, or protection, of the FBI's radio traffic has long been a problem and is becoming more so. With the availability of relatively inexpensive scanners today it is easy for almost anyone to monitor the FBI's radio traffic. Also there are books available to the public that list the frequencies used by Government agencies, including the FBI, as well as the cities in which these frequencies are used. A recent survey conducted in all of our field offices revealed that protection of our radio traffic is the number one problem in radio communications today. The FBI has many documented examples of radio monitoring by the news media, the general public, and criminal elements. This has often caused a great loss of effort and time, and could result in a dangerous situation for both our agents and victims. For example, in one kidnapping case the news media was on the scene with their cameras filming each event as it occurred. This creates a potentially dangerous situation for the victim and results in wasted manhours and effort. Another example of the need for protection of the radio traffic occurred when a search warrant was executed on an organized criminal element and a large quantity of scanners were located. All of the FBI's frequencies that were in use in that city were programmed into these scanners. This is the kind of situation that is potentially dangerous for our agents. These are but two examples of the many documented cases that pointed out the need for protection, or voice privacy, required for the FBI's radio equipment. The FBI is planning to begin the task of equipping all of its radio equipment with a voice privacy device in FY 1982. We have under development at this time a voice privacy device which is tailored to our equipment and which will be added to our present equipment.

ADP and Telecommunications Increase

There is a request of $47.6 million for ADP and telecommunications - an increase of $9 milion. This is down $3 million from the original budget request. For the record, will you please provide details on how and when these monies will be expended?

The FBI's Automated Data Processing and Telecommunication (ADPT) Program provides services in three areas: telephone services, word processing services, and ADP and data communications. Budget estimates for 1982 include approximately $10,000,000 for telephone services; $2,000,000 for word processing services; and $35,600,000 for ADP and data communications. The telephone and word processing services are totally dedicated to the FBI's investigative mission. The ADP and data communications services provide for the collection and exchange of criminal justice information among the criminal justice community as well as directly supporting the FBI's investigative activities and providing necessary internal management information.

The funding requested for 1982 will first provide for continuation of all current services. An increase of $9,012,000 is requested to support the development and implementation of ADP and data communica-

tions capabilities which are dedicated to the FBI's investigative mission. These initiatives are as follows:

- The continued development and implementation of dedicated organized crime and foreign courterintelligence information analysis capabilities. The requested funding will provide FBI field offices with secure data terminals, encryption devices, and necessary site upgrades of electrical power and air conditioning.

- The application of office automation technology to the FBI's field offices. This technology involves the integration of word origination, word processing, data processing and data communications. The requested funding will provide for the partial implementation of office automation concepts with the New York Field Office.

- The development and implementation of a modern, cost-effective, and secure data communications infrastructure to support transmission of the data associated with the two above-noted initiatives between FBI Headquarters and all FBI field offices. The requested funding will provide for the conversion of an inefficient and expensive dial-up internal FBI teletype system to a modern and efficient secure system. Plans involve obtaining data communications services from the Department of Defense Automated Digitial Network.

The ADPT budget request is actually $3,700,000 less than the original request. The Reagan Administration made the reduction in conjunction with directions to delay computerization by one calendar-quarter. All of the reduction involved capital investments of ADP equipment, and it was necessary for the FBI to restructure its Long-Range ADP Plan to reflect 1982 objectives which must now be moved forward to 1983. This delay will result in a ripple effect by delaying 1983 outyear objectives and moving them forward one quarter.

Most of the requested increase involves capital investments, and it is anticipated that most ADP equipment procurements will be completed during 1982. Two-year funding was requested for $5,000,000 to insure that procurements scheduled for completion at the end of 1982 need not be terminated due to an uncontrollable delay. It should be noted that the ADP procurement process is complicated and time-consuming and each procurement action will take between 9 and 18 months.

Records Management Study

There is another request of $982,000 for records management which includes funds for an outside consultant study. How much is budgeted for this study and why is it needed?

The Records Management Division (RMD) is requesting $50,000 to continue a consultant study and analysis initiated in FY 1981. Elements of the Automated Records Management System (ARMS) program include the File Automated Control System (FACS), administrative and investigative files; the Automated Incoming Mail Serialization (AIMS), which has enabled in Phase I, the on-line serialization of all mail and cross-reference searching of the date, source, classification, serial and type of mail, and in Phase II, the discontinuance of hardcopy abstracts in all administrative and investigative matters. The next

phase is the automation of the central card index and the integration of this system with present on-line systems. Discussions have been held with a consultant who has extensive experience and expertise in retrieval systems, and who will advise RMD of the most viable and cost effective systems and methods to utilize in automating the FBI Headquarters' (FBIHQ) card index. This study will enable RMD to analyze the stages of the ARMS program that have been implemented and examine the program and hardware that will be responsive to the searching and retrieval requirements of the FBI field offices, FBIHQ officials, the name check program, and search requirements for the processing of mail. This study would also examine the applicability of certain phases of the SAFE System (a joint CIA-DIA venture) to the RMD/ARMS effort.

Authorization of Rewards Payments

The authorization request seeks continuing authority to pay rewards. How often is this authority used? How much was paid in rewards last year?

Although we have language phraseology permitting the expenditure of funds for rewards, no public rewards have been paid by the FBI in any Bureau case since November 1937. We do not request funds for such a purpose. The Attorney General has the authority to pay rewards up to $25,000 for information on any person wanted for violation of criminal laws. At the specific instruction of Attorney General Robert F. Kennedy, a reward poster was issued by the Department of Justice (DOJ) on April 4, 1961, in the amount of $10,000 for information leading to the arrest and conviction of anyone violating a Federal statute in connection with hijacking of aircraft. This was considered a DOJ rather than an FBI offer.

With regard to the Fugitive Program, can you tell me how the responsibilities of the FBI differ from those of the Marshals Service?

The U.S. Marshals Service (USMS) in the past has been responsible for transporting Federal prisoners, providing security to the United States Judiciary, and the service of Federal subpoenas and arrest warrants. On October 1, 1979, primary jurisdiction to conduct investigations to locate fugitives who are escaped federal prisoners, federal parole, probation and bond default violators was transferred from the FBI Fugitive Program to the USMS.

The FBI has primary jurisdiction to locate state and local fugitives under the Fugitive Felon Act (Title 18, U.S. Code, Section 1073). The FBI also has retained authority to seek fugitive violators of the Bond Default statute (Title 18, U.S. Code, Section 3150) when the violation has arisen from an FBI substantive investigation and occurs prior to the adjudication of the case in a Federal court. The FBI also has the authority to seek escaped federal prisoners and federal probation and parole violators when subsequent to their escape or violation they commit or become suspects in crimes over which the FBI has primary jurisdiction.

Under the Fugitive Felon Act, the FBI is able to exercise a considerable positive impact on the ever-increasing rise in state and local crimes, particularly in the area of violent crime, by providing in many cases swift apprehension of those violators who flee across

state lines for the purpose of avoiding apprehension. On many occasions, as a result of interviews conducted by the FBI following the arrest of a fugitive, the subject not only admits to the local crime for which he is being sought, but to others he has committed before, during, or subsequent to his flight. In other instances, evidence found by FBI agents during their search for, or arrest of the fugitive further connects him to the crime. As state and local police agencies come under more severe budget constraints, the FBI, through use of the Fugitive Felon Act, provides a tool for these departments to assist in keeping their crime problems under control.

Referral of Inspector General Fraud Cases

It is our understanding that when an Inspector General finds evidence of fraud, the matter is referred to the Department of Justice for investigation by the FBI. Have the Inspectors General referred many cases to the FBI for investigation?

Most Inspectors General interpret the Inspectors General Act of 1978 as giving the Office of Inspector General primary criminal investigative jurisdiction over all violations relating to the programs and functions of their respective agencies. Some of the affected agencies have continued to refer criminal matters to the FBI for investigation, primarily because existing manpower constraints greatly limit their involvement in criminal investigations. Those agencies with sufficient resources within their Office of the Inspector General are not referring criminal matters to the FBI for investigation. The FBI has noticed a considerable decrease in the overall total of matters being referred.

Your January justification projects a significant increase in the backlog of Freedom of Information and Privacy Act requests.

BACKLOG OF REQUESTS:			*BACKLOG OF APPEALS:*		
1981	*1982*	*1983*	*1981*	*1982*	*1983*
2,464	*2,322*	*3,074*	*475*	*515*	*1,050*

What is the reason for this increase?

The estimated accomplishment and workload figures for the FOIPA program in 1983 were inadvertently obtained from an earlier budget analysis prepared for the Office of Management and Budget and represented a projected output for 1983 based on an assumed reduction of 25 workyears. As a result, a significant increase was projected for 1983 in the backlog of requests and administrative appeals.

The projections for 1981 and 1982 as shown in the January justification were predicated on actual year-end results achieved during FY 1980. Similar estimates for 1983, assuming no reduction in the 1982 funding level, should have been projected as follows:

No record and administrative closings	9,750
Requests processed with identifiable records released	5,392
Total requests handled	15,142
Backlog of requests*	2,180
Appeals resolved and closed	1,400
Backlog of appeals	615
Correction/amendment requests resolved	100

*Backlog does not include those matters which are predictably no record or which can be administratively closed.

The backlog of FOIPA requests and administrative appeals should have been projected as follows:

BACKLOG OF REQUESTS:			BACKLOG OF APPEALS:		
1981	1982	1983	1981	1982	1983
2,464	2,322	2,180	475	515	615

Why aren't the improvements in records management operations anticipated to significantly affect this backlog?

The FBI does not continue to anticipate that management improvements will contribute to a gradual reduction of our FOIPA backlogs. Some improvements have been implemented, others will not be fully operational until the end of 1981 and their effect will have to await actual assessment in 1982. Resources have also been reassigned within the FOIPA Section to stop the projected growth in the backlog of administrative appeals.

Use of Aircraft in Investigations

The budget reflects increases for aircraft surveillance in several places. Two areas are Organized Crime - $623,000 and White Collar Crime - $622,000. How many aircraft does the Bureau have available? Is all of the money requested here for leases or do you contemplate purchasing aircraft?

The FBI presently owns 14 aircraft, of which 13 are old aircraft excessed to the FBI by the military or other Government agencies. The one new aircraft owned by the FBI is a special project aircraft primarily dedicated to FCI operations. Two of the aircraft were special purpose aircraft excessed from the U.S. Air Force which are no longer operational and negotiations are underway to return them to the military. Therefore, the FBI owns 12 operational aircraft. In addition, five fixed-wing and five helicopters are on loan to the FBI from the military. The five fixed-wing aircraft will be returned to the U.S. Army at the end of 1981 due to age and excess airframe hours.

The FBI presently has 14 leased aircraft with two additional leases being negotiated. In addition during the period from October 1, 1980 to December 31, 1980, an average of 68 separate aircraft were rented on an hourly basis per month. The money requested in 1982 is for aircraft operations lease and rental.

The 1981 budget level is $1,271,000 of which $275,000 will be required for counterterrorism helicopter operations leaving $996,000

for field operations, 47 percent less than projected amounts not including increased cost of operations due to gas, maintenance and rental increases.

In 1982, the request for aircraft operations, including enhancements, is $3,930,000. Of this amount, $374,000 is for counterterrorism helicopter operations, $216,000 for EXPO 82, $473,331 for their aircraft operations, and $100,000 for technical support equipment, leaving $2,766,159 for field operations. This is a 26 percent increase over projections for 1981 of which approximately 15 percent will be taken by inflation. The remaining 10 percent will accommodate a small amount of growth and absorb the increased cost in operations which will result from the loss of the five military aircraft which will have to be replaced with lease aircraft.

Fingerprint Identification Backlog

What impact will the $1,275,000 requested for the Fingerprint Identification Program have on your backlog?

Approval of the funds would have no appreciable impact in reducing the Identification Division's work backlog in the near future. On the other hand, disapproval of the funds would result in increases in the work backlog in the future.

The following is a breakdown of the proposed expeditures which make up the $1,275,000, and an assessment of their impact:

- Funding of $99,000 is for the rental of facsimile equipment. This equipment is needed to allow law enforcement agencies to transmit fingerprints to the Division for identification purposes in urgent situations, e.g., in cases involving fugitives, deceased persons, and amnesia victims. While the disapproval of this money will not impact the Division's work backlog, it would cause severe problems and hardships for the law enforcement agencies using this service.

- Funding of $200,000 is for the development of an automated latent fingerprint identification system. While this system would have no relation to the Division's backlog in processing 10-finger inked fingerprint cards, it would greatly increase the Division's ability to identify criminals on the basis of the latent fingerprints they leave at the scenes of their crimes.

- Funding of $367,000 is for the acquisition of additional data entry equipment. This equipment is needed to keep the Division's already automated arrest record files updated with new data. While this expenditure would have no immediate significant impact on reducing the work backlog, its disapproval would result in future increases in work backlog. This is because the Division would not have sufficient data entry equipment to keep up with normal file growth and, therefore, would have to return to less efficient manual word-processing functions.

- Funding of $609,000 is to be used to complete and "fine-tune" work functions wherein automation has already been introduced. While this expenditure would have only a relatively small effect in improving the work backlog, its disapproval would jeopardize the gains already made in automating the Division's work functions, thereby resulting in future increases in work backlog.

Questions Submitted by Senator Hollings

Impact of Hiring Freeze

What has been the impact of the 1-for-2 hiring freeze imposed by the previous Administration? Has there been any real monetary savings to the FBI as a result of that freeze?

Understaffing has resulted in several areas, particularly in those of stenographic and word-processing. Also, certain analytical and technical personnel such as computer specialists, intelligence analysts and laboratory personnel could not be brought on board due to the hiring restrictions.

There was no monetary savings inasmuch as it was necessary to pay overtime to support personnel. This was absolutely necessary in order to continue the mission of the FBI. Through February 21, 1981, a total of $3,623,552 in overtime was paid to support employees. During the comparable period in FY 1980 a total of $1,037,897 was paid.

Non-Reimbursable Applicant Investigations

What is the reason for the significant increase in the number of Non-Reimbursable Applicant investigations from 41,681 (actual) in FY 1979 to 65,000 (projected) in FY 1982?

The projection for FY 1982, representing a substantial increase in investigative matters, was based on the presumption that the one-for-two hiring freeze of the Carter Administration would continue throughout FY 1981 and then be lifted. Hiring to close the gap between on-board strength and the funded level plus hiring to stay current with normal attrition prompted the substantially increased workload projection. It is noted that one applicant may lead to a number of field investigative matters because of different residences, schooling, and employment.

Organized Crime Investigative Matters

Why has there been a decrease in the Organized Crime total number of investigative matters received in FY 1979 (25,349) through FY 1982 (22,310)?

Between FY 1979 and 1980 the Federal Bureau of Investigation (FBI) reprogrammed its resources and transferred certain classifications of criminal violations and responsibilities from the Organized Crime Program to other more applicable investigative programs such as White Collar Crime, General Property Crime, and Personal Crime. For example, in FY 1980, approximately 2,500 investigative matters were credited to other programs and not to the Organized Crime Program as in previous years.

Prior to FY 1980, statistical accomplishments relative to the Racketeer Influenced and Corrupt Organizations Statute (RICO) and labor racketeering matters were attributed to the Organized Crime

Program. A restructuring of these classifications as to program area has enabled the FBI to improve administration and maintain more accurate statistics relative to manpower utilization within specific program areas.

The RICO classification, as an example, has been substructured to identify violations targetted, and statistical accomplishments achieved under the Organized Crime, White Collar Crime, General Property Crimes, Personal Crimes, and Terrorism programs. Similar subclassifications are also applicable to Hobbs Act and labor racketeering matters.

Terrorism Program Reduction

In the FY 1982 Authorization and Budget Request for the Congress there is an increase in projected matters received in Terrorism from 5,850 in FY 1981 to 6,200 in FY 1982, yet you are recommending a reduction of 21 positions in this program. Why?

The Terrorism Program was reduced by 21 positions for FY 1982 because of a shortfall in its manpower utilization in previous years. This shortfall, which was reflected in Time Utilization Record Keeping (TURK) data, occurred despite an increase in program matters received. An explanation for the contradiction between these two indicators is that a substantial increase occurred in the Foreign Counterintelligence Terrorism Program requiring the redirection of manpower which would normally be used under the Domestic Terrorism Program.

In the narrative on Terrorism you make reference to a redirection of resources since "most terrorist activity appears concentrated in the major metropolitan areas." What does this statement mean?

The redirection of resources referred to on page 28 of the 1982 Authorization and Budget Request for Congress refers not to a relocation of manpower as much as it does to prioritization of investigative effort. This prioritization will involve a greater concentration of manpower and investigative emphasis against the domestic terrorist groups that are the most active in the United States, and historically the incidents they have committed were in the major metropolitan areas.

Forensic Services Increase

The Forensic Services-Federal Program request is for 24 positions and $2,644,000 above the base. What are the activities covered by the request and what, in detail, will the request provide for?

The 24 positions requested by the Laboratory will be utilized in the following areas:

- Document Section - Two translators are necessary to reduce the current excessive turnaround time, particularly in Chinese language matters. Two polygraph examiners will be used to expand our capability to provide polygraph instruction to our examiners. Two computer programmer positions and one research aide position

are being requested to provide essential resources to devote to Document research projects.

- Scientific Analysis Section - One support person is needed to conduct necessary repair and maintenance on instruments in the Chemistry-Toxicology Unit. One support person is needed to assist in handling workload increases in the Firearms-Toolmarks Unit. One support position and one examiner are needed in the Explosives Unit to reduce turnaround time and to insure accurate and complete examination results. Two examiners and two support persons are needed to handle the increased demand for examinations in the Mineralogy/Metallurgy Unit. Because of an excessive workload in this Unit, it has been necessary on occasion to place a moratorium on examination requests.

- Special Projects Section - One photo-technician is needed to assist instructors providing photography training to new agents and in-service classes allowing instructors to concentrate on more important aspects of training.

- The remainder of the positions requested will be utilized at the Forensic Science Research and Training Center (FSRTC) primarily in the area of research and support. These include a research scientist in physics, a chemist to assist in the forensic research program, an instructor with an expertise in the examination of hairs and bloodstains, and support personnel such as laboratory workers and clerk-typists. The FSRTC which uniquely combines forensic research and training will be completed in April, 1981.

The major portion of the equipment enhancement requested in FY 1982 will be utilized to complete the purchase of instruments for the FSRTC. This enhancement is necessary because of a major rescission of funds for the FSRTC during FY 1981.

Funds were also requested to conduct much needed research in the areas of image processing, digital analysis of handwriting and photogrammetry. Much of this research is essential to provide adequate support for priority investigative areas.

Other enhancements, in smaller amounts, were requested for research, expendable supplies and equipment.

Buenos Aires Legal Attache Office

You recently closed the Buenos Aires Legal Attache Office because of a program reduction. When the program reduction was restored by reprogramming at the suggestion of the Appropriations Committee, a new office was listed to be opened in Montevideo and the Buenos Aires office was not listed. Why?

In order for the FBI to effect proper coverage in South America, two Legal Attache Offices are essential. We currently have only one office, namely, Bogota, Colombia, and we are proposing to open an office in Montevideo, Uruguay. The decision to operate out of Montevideo rather than Buenos Aires, Argentina, is based on the following considerations:

1. Uruguay enjoys a safer and more stable political climate;

2. A cost study reflects that because of a very high rate of inflation existing in Argentina, budgetary considerations dictate that our second office be located in Montevideo;

3. An inquiry at the U.S. Embassy, Montevideo, revealed that adequate space for an office is available, and the Embassy, which houses many regional offices of other U.S. agencies, is receptive to our presence.

Vehicle Replacement Program

For FY 1981 the Congress authorized the replacement of 1,100 passenger vehicles. We are informed that the FBI intends to purchase only 680. What accounts for the difference of 420 vehicles and what happened to funds for their purchase?

In his March 1980 budget revisions, President Carter directed a 10 percent reduction in planned expenditures by all agencies and departments for FY 1981. Faced with a 10 percent mandated reduction, the management staff of the FBI reduced planned funding for vehicle procurement by $2,200,000. This management decision reduced the funds available from $7,156,800 to $4,956,800. The reduction in funds coupled with manufacturer price increases will result in the purchase of only 680 vehicles. The $2,200,000 was never appropriated to the FBI for the purchase of vehicles.

In your 1982 authorization language you request authority to replace 1,500 automobiles, but the justification mentions 1,460. Why the difference?

At the time the authorization language was formulated, the FBI, based on replacement needs, planned to purchase 1,500 automobiles. When the request to Congress was drafted, a projection based on automobile prices at that time indicated that 1,460 vehicles could be purchased. It is now estimated that by the time the FBI appropriation is received, only 1,328 can be purchased due to inflationary price increases.

Does the number of automobiles you are requesting for replacement meet all of your replacement needs based on the 60,000 mile/six year standard?

No, it does not. The requested funding will permit the FBI to replace 62 percent of the fleet that will meet the GSA replacement standard of 60,000 miles or six years. This represents 1,328 vehicles at a projected cost of $7,700 per vehicle.

In order for the FBI to replace all automobiles in 1982 that will have reached the replacement standard, the purchase of an additional 794 automobiles costing $6,098,000 would be required. A 100 percent replacement would require funding in the amount of $16,328,000.

FBI Training Program

The General Law Enforcement Training Program request indicates that if the 30 requested Special Agent positions are not allowed, only an average of 700 instructional hours per state will be given. How many additional hours of instruction will be given with the 30 requested positions?

The revised Presidential budget submitted March 10, 1981, eliminates the 30 requested positions. If these 30 positions were available, it is our estimate that an average of 1,240 hours of instruction per state could be accomplished.

By comparison, in FY 1975 the FBI provided an average of 2,100 hours of instruction per state.

Do you have adequate resources to provide sufficient training for state and local police officers?

We offer two types of training to state and local police officers. The first type is training at the FBI Academy at Quantico, Virginia. This training consists of the FBI National Academy program and various specialized courses including the National Executive Institute for the nation's chief law enforcement officials. The other type training we provide is through our police instructor-trained special agents assigned in each of our field offices throughout the country. These instructors conduct classes usually in conjunction with a scheduled police training school sponsored by the state or local government. The FBI instructor is invited to participate because of his or her particular expertise and training. We have over 2,000 of our special agents trained for this program, most of these carry full caseloads in our other investigative programs.

In 1980 we conducted a survey of 1,594 law enforcement agencies regarding training needs. Of the respondents 33 percent indicated they received no FBI training but desired to receive that training. Nearly one-half (44 percent) of the agencies receiving FBI training requested twice as much training as was provided.

Transfer of FBI Personnel

We have heard in the past that the FBI has experienced difficulty in transferring personnel because of the financial and other burdens placed on the personnel involved. Is this still a problem?

This is indeed still a problem. All agents are subject to transfer to meet the Bureau's personnel needs. Although we know that all agents are concerned about the costs of transfers to them personally, the personal burdens are most evident in the Career Development Program which governs the promotion and administrative advancement procedures for special agents. To staff FBI Headquarters and our Field Offices with qualified managers through our Career Development Program, we must often make geographic transfers of personnel.

In late 1979, a survey of Special Agents in Charge (SAC) in seven of our major field offices elicited responses from all seven on the deleterious effect of transfers on the Career Development Program.

These SAC's estimated that only about one-third of the FBI Special Agents with management aptitude were participating in the Career Development Program, largely because of the financial hardships associated with transfers. Due to the costs involved many of our agents, including many who are involved in the Career Development Program, view moves which are a necessary part of the program, as being financially punitive and at time ruinous. Our agents are finding that it is becoming more difficult financially for them to move especially when they make a lateral move at no increase in pay and in the process must buy a home with a higher interest rate and absorb many of the costs associated with the move. Monthly mortgage payments in excess of $1,200 are no longer uncommon for these agents.

The emotional pressures associated with moving a family are further compounded by the fact that our agents are forced to pay many expenses connected with a transfer out of their pockets. For instance, payment of points which are currently running as high as eight points on VA or FHA loans and one point on a conventional loan, are not reimbursable. Further, an agent may only be reimbursed up to $8,000 for expenses incurred in connection with the sale of his residence. Hence, if he is selling a house valued at $100,000 or more, normal real estate expense alone would exceed the $8,000 limit. A survey of real estate purchase vouchers for FY 1979 indicates that approximately 12 percent of all our employees selling residences as a result of transfer submitted vouchers which exceeded the $8,000 reimbursement limit by an average of approximately $800. This survey included transfers of our support personnel and single agents whose expenses are less than the typical married agents.

Perhaps of even greater significance are the income tax implications associated with a transfer. For instance, of the $12,000 maximum reimbursement associated with the purchase and sale of a residence, only $3,000 is tax exempt. It should also be pointed out that all other reimbursable expenses exceeding the $3,000 limit, such as allowances for temporary quarters and house-hunting trips, are also taxed as ordinary income.

In connection with temporary quarters allowances, one other problem is prevalent. Often our agents who have been transferred to a new assignment are compelled to live there without their families because of difficulties encountered in selling old residences. There are no provisions allowing reimbursement of travel expenses to visit one's family while separated. Further, an agent and his family are only allowed reimbursement for temporary quarters based upon a decreasing formula of up to 30 days. Hence, under the circumstances, if the agent decides to finally move his family, he can almost be assured that he will have significant out-of-pocket expenses to maintain both himself and his family once the 30-day period has expired. In effect, the agent is often forced to maintain two households.

The weight allowances for the movement of household goods also are unrealistic. For instance, an agent with dependents is reimbursed only for movement of household goods up to 11,000 pounds. Yet a sampling of our Government Bill of Lading vouchers revealed that approximately 20 percent of such shipments were overweight by an average of 1,275 pounds resulting in an average out-of-pocket cost of $290 to the employee. I emphasize that this study does not take into account the fact that many employees sell their household goods to come within the weight limitations.

Training Provided to Knoxville and Knox County

How much money has been spent by the FBI to provide training to the Knoxville, Tennessee, Police Department and the Knox County, Tennessee, Sheriff's Office in preparation for EXPO 82?

To date, including projected costs for training currently scheduled, the FBI expended approximately $39,342 for training local officers for EXPO 82. These expenditures consist of crisis management seminars, Special Weapons and Tactics (SWAT) exercises, explosive devices handling courses, trips by FBI and local officers to cities previously hosting similar events, EXPO 82 Working Group meetings, and informal conferences and contacts with Knoxville FBI management officials.

FBI EXPO 82 TRAINING COSTS

Summary of travel costs:*	
State and local police personnel	$9,928
FBI personnel travel	3,220
Summary of actual salary costs to date incident to training:	
FBI personnel	15,489
Summary of projected salary costs incident to training (Not including travel and per diem):	
FBI personnel	10,705
Total estimated costs	39,342

*Includes travel of FBI and local police personnel to Spokane, Washington, San Juan, Puerto Rico, and Lake Placid, New York, to observe similar activities and arrangements planned for EXPO 82.

Reduction of Special Agents

In 1978 the Federal Bureau of Investigation had 20,192 positions of which 8,338 were special agents. The previous Administration steadily reduced them so that a total of 19,421 are budgeted for 1982, of which 8,120 are special agents. The Reagan Administration did not change the number of positions requested by President Carter. What was the number of special agents positions initially requested by the FBI for 1982? In which areas did you have to reduce your initial request to get down to 8,120 special agents?

The FBI requested 8,511 special agent positions in its initial budget request to the Department of Justice.

The Department of Justice (DOJ) recommended a net reduction of 162 special agent positions, which were reduced from the following decision units:

Decision Unit	DOJ Recommended Reductions
General Government Crimes	23
Fugutive	81
Personal Crimes	46
All Other	12
Total DOJ reductions	162

OMB recommended a further reduction of 229 special agent positions, which were reduced from the following decision units:

Decision Unit	OMB Recommended Reductions
Civil, Applicant, & Other	22
Organized Crime	58
White-Collar Crime	96
Fugutive	16
Terrorism	14
General Law Enforcement Training	22
All Other	1
Total OMB reductions	229

Foreign Counterintelligence Program

What is your overall assessment of the Foreign Counterintelligence Program?

The Foreign Counterintelligence Program of the FBI has been strengthened in recent years through improved management techniques, data collection and storage, and operational analysis and research. This program has been designated as one of the FBI's highest priority programs and has accordingly received the support and resources necessary to fulfill our FCI objectives. Within FCI, resources have been allocated to priority subprograms and some very important accomplishments have resulted. Automated data collection and research and analysis hold much promise to significantly improve this program.

Is the FBI still receiving the cooperation it needs from the Department of State?

One important facet in protecting the national security is to exclude known foreign hostile intelligence officers from being admitted to the U.S. The U.S. Department of State has cooperated in this effort by denying visas to those identified officers based on information supplied by the FBI. We understand that FCI concerns are only one of a number of factors which State must consider in deciding whether or not to exclude an official representative of even a hostile foreign country.

Agents in Cuban Flotilla

How many Soviet and Cuban agents did the FBI discover among the Cuban refugees?

Among the Cuban immigrants of last year the FBI has identified a limited number of these nationals who have had varying degrees of contact or affiliation with Cuban intelligence. These identifications were made through extensive screening and interview of the immigrants. Since the Cuban government knows precisely how many immigrants were given intelligence assignments, we would prefer not to announce publicly a specific number.

U.S. Attorneys and Marshals

STATEMENT OF WILLIAM P. TYSON, ACTING DIRECTOR, EXECUTIVE OFFICE FOR U.S. ATTORNEYS

ACCOMPANIED BY:

LAURENCE McWHORTER, ACTING DEPUTY DIRECTOR
FRANCIS X. MALLGRAVE, ASSISTANT DIRECTOR
EDWARD A. MOYER, FINANCIAL MANAGER
KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION

INTRODUCTION OF ASSOCIATES

Senator Weicker. Our next request is for the U.S. attorneys and marshals appropriations. The request is for $278,205,000, a decrease of $7,418,000 from the base. This includes some automation increases and some position decreases for the U.S. attorneys, the elimination of the pilot program for bankruptcy trustees, and a number of changes for the Marshals Service which net to a decrease of 209 positions and $2,676,000. In addition, the estimate includes a legislative proposal that would relieve the U.S. attorneys and U.S. marshals of their responsibilities to the District of Columbia. This would result in a further reduction of 314 positions and $13,001,000.

Appearing on behalf of this request is William P. Tyson, Acting Director of the Executive Office for the U.S. Attorneys. Mr. Tyson is accompanied by Laurence S. McWhorter, Acting Deputy Director, Francis X. Mallgrave, Assistant Director, Edward A. Moyer, Financial Manager, and by Kevin D. Rooney, Assistant Attorney General for Administration.

We will be pleased to hear your statement.

Mr. Tyson. Mr. Chairman, it's a pleasure to be here.

PREPARED STATEMENT

Senator Weicker. Your statement in its entirety will be put in the record.

[The information follows:]

Statement of William P. Tyson

I am pleased to have the opportunity to appear before you on behalf of the 1982 request for the U.S. attorneys, U.S. trustees, and the U.S. marshals. The total request is $278,205,000 and 5,959 positions, a net decrease of $7,418,000 and 842 positions below the amounts anticipated for 1981. The requested amount includes a reduction for a legislative proposal of $13,001,000 and 314 positions to relieve the U.S. attorneys and marshals of their responsibilities under the District of Columbia code. The request for the U.S. attorneys is $180,844,000 and 4,079 positions, for the U.S. trustees, $270,000; and, for the U.S. Marshals Service, $97,091,000 and 1,880 positions.

My role today will be to present the portion of the request which pertains to the U.S. attorneys. I will be followed by Mr. Richard L. Levine, Director, U.S. trustees, who will appear before you on behalf of the U.S. trustees. Mr. William E. Hall,

Director, U.S. Marshals Service, will appear on behalf of the Marshals Service and the support of U.S. prisoners appropriation.

The U.S. attorneys' request provides for the prosecution of Federal criminal offenses and the conduct of the Government's civil litigation in the 95 Federal judicial districts. An appropriation of $180,884,000 and 4,079 positions is requested for the U.S. attorneys—an increase of $4,463,000 and a decrease of 338 positions from the appropriation anticipated for 1981. Changes to the budget are summarized as follows: uncontrollable increases totaling $10,003,000; decreases totaling $143,000; program decreases amounting to 112 positions; program increases totaling $4,049,000; and a reduction of 226 positions and $9,146,000 in anticipation of legislation transferring the U.S. attorney's prosecutorial authority under the District of Columbia code to the District of Columbia government.

Although the first two items are largely technical adjustments, I would like to point out that the computation of increased pay costs has been diminished, to a substantial extent, by savings realized through reduced employment. Due to governmentwide restrictions on employment, the U.S. attorneys will average nearly 300 fewer personnel on duty this year than the number provided in 1981. For 1982, some additional funding for the comparability pay increase approved in October 1980 will permit average employment for the year to increase by 80 employees.

Incidental to the employment reductions accomplished through restrictions on funding for increased pay costs, a program decrease of 112 positions is reflected in the U.S. attorneys' 1982 budget. It is expected that this reduction will be distributed among the U.S. attorneys' programs as follows: a decrease of 10 positions for appellate activity; a decrease of 65 positions for criminal litigation; and a decrease of 37 positions for civil litigation. The actual programmatic distribution of these cutbacks will, however, depend on the exigencies of the caseload in the districts to which the cutbacks are directed. In terms of personnel categories, the U.S. attorneys will have available 52 fewer attorney positions, 6 fewer paralegal positions and 54 fewer support positions.

The position decrease is accompanied by program increases for debt collections activities and for the caseload management project. The U.S. attorneys' request includes $555,000 for the acquisition of additional word processing equipment and for other costs associated with improving recordkeeping and increasing the production of correspondence and other documentation relative to the collection of debts due the Government. Nationwide, there are approximately 60,000 debtor accounts for which the U.S. attorneys are now responsible. High speed, efficient equipment is essential to keep track of outstanding debts, to maximize the receipt of debtor payments, and, in the absence of debtor cooperation, to obtain legal remedies which are available.

An increase of $3,494,000 for the caseload management project will provide for the acquisition of additional data processing equipment and contractual services critical to the continued implementation of the new caseload management information system. The initial stage of the project is underway in four districts and the requested funding increase will allow implementation to begin in 20 additional districts in 1982. As presented to the subcommittee in the past, the caseload management project is an ongoing effort by the Executive Office for U.S. attorneys to improve the availability and timeliness of accurate, comprehensive information on the work of U.S. attorneys.

Before closing I would like to bring the subcommittee's attention to a particular contingency which will have a substantial bearing on the resource levels required for 1982. As noted above, the U.S. attorneys' 1982 request contemplates the enactment of legislation transferring prosecutorial authority in the District of Columbia to the District of Columbia government. If such legislation is not enacted, the U.S. attorneys will require restoration of resources to continue prosecuting District of Columbia offenses.

I will be glad to respond at this time to any questions which you may have.

BUDGET REQUEST

Mr. TYSON. Thank you, sir. I would like to summarize the statement I submitted.

I am appearing as the lead-off witness on behalf of the fiscal year 1982 budget request for the U.S. attorneys, the U.S. trustees, and the U.S. Marshals Service. The total amount of this budget request is $278,205,000 and 5,959 positions. That is a net decrease of $7,418,000 and 842 positions below the amount requested for fiscal year 1981.

As indicated, the budget request includes a proposal for a reduction relating to the transfer of jurisdiction to the District of Columbia. This involves a decrease of $13,001,000 and 314 positions. This proposal, if submitted and enacted, would relieve the U.S. attorneys and U.S. marshals of their responsibilities under the D.C. code.

The specific request for each of the organizations included in this budget are for the U.S. attorneys $180,844,000 and 4,079 positions; for the U.S. trustees, $270,000 and no positions; for the U.S. marshals $97,091,000 and 1,880 positions.

My principal role is to present the portion of the budget request pertaining to the U.S. attorneys. I will be followed by Mr. Levine for the U.S. trustees, and Mr. William D. Hall for the U.S. marshals.

The U.S. attorney's budget request provides for the prosecution of criminal cases, violations of the Federal Code, and representation of the interests of the United States in the conduct of civil litigation involving the U.S. Government.

Our request for $180,844,000 and 4,079 positions is an increase of $4,463,000 and a decrease of 338 positions from the appropriation anticipated for 1981.

SUMMARY OF CHANGES

In summary, the changes to the budget are: First, uncontrollable increases totaling $10,003,000. Second, a decrease of $143,000. Third, program decreases of 112 positions. Fourth, program increases of $4,049,000. And fifth, a reduction of 226 positions and $9,146,000 connected with the legislative proposal.

My written statement goes into these changes in more detail, but I will point out that the above figures reflect savings in the pay cost realized by virtue of reduced employment which in turn has been caused by hiring freezes and other limitations on hiring. As a result of such restrictions, we will average 300 fewer personnel than the number provided in the fiscal year 1981 budget.

For fiscal year 1982 we would hope to increase employment by 80 employees, using additional funding for the comparability pay increase approved in October 1980. The program reduction of 112 positions I mentioned above will be distributed among our appellate activity, criminal litigation, and civil litigation in appropriate numbers.

The reductions will result in 52 fewer attorneys, 6 fewer paralegal positions, and 54 fewer support positions. We are asking for a program increase for debt collection activities in the amount of $555,000, for additional word-processing equipment and other costs associated with improved recordkeeping and improvements in producing correspondence and documentation needed in collecting debts.

There are at least 60,000 debtor accounts totaling over $70,000,000 which the U.S. marshals are responsible for collecting. High speed, efficient equipment is essential to keep track of outstanding debts and to maximize the receipt of debtor payments.

As to the caseload management project, we are asking for $3,494,000 for data processing equipment and contractual services critical to the continued implementation of our management of information systems. As a result of the support that the Congress has given us in the past, we have four pilot programs in operation for this project. The addi-

tional funding of $3,494,000 requested would permit us to expand in 20 additional districts in fiscal year 1982.

This program will permit my office to fulfill the promises made previously to the subcommittee to improve the availability and timeliness of accurate, comprehensive information on the work of the U.S. attorneys.

DECREASE FOR DISTRICT OF COLUMBIA OPERATIONS

Finally, I would like to return for a moment to the possible transfer of jurisdiction to the District of Columbia, as mentioned earlier. This aspect of our budget request gives me some concern. As the Attorney General has indicated in his testimony, this proposal was initiated by the previous administration. If the proposal is not submitted or not enacted, it is critically important that the Congress restore to the U.S. attorneys the resources, that is 226 positions, and $9,146,000, necessary to continue servicing the superior court in the District of Columbia. Otherwise, we would have to take these resources away from other parts of the country and significantly diminish the services in those locations to fulfill our responsibilities in the District of Columbia.

Thank you for your courtesy and attention.

TIMING OF DISTRICT OF COLUMBIA TRANSFER

Senator WEICKER. Well, let's start with the subject you just raised. What assumption is made as to when the legislation will be enacted transferring the marshals role to the District?

Mr. ROONEY. The budget assumes that it would be enacted prior to fiscal year 1982. The resources are reduced in the fiscal year 1982 budget.

Senator WEICKER. And this budget goes on that assumption?

Mr. ROONEY. That is correct.

Senator WEICKER. As a political matter I think it probably will be enacted before October. As a matter of prudent budgeting, I think this should be included in the budget.

Mr. ROONEY. This legislative proposal was included in the original budget prepared by the last administration. That portion of the budget was not revised by the new administration.

Senator WEICKER. Well, I don't know how we will handle it in this committee but I know that speaking for myself, this is a contingent liability. I believe that is the expression used around here. It is a contingent liability. I am very conservative in my fiscal practices and I somehow want this accounted for in here so that everybody doesn't sit there in great shock and surprise.

I agree with you. I gather from what you are saying you are not going to be able to absorb this within your present budget.

Mr. TYSON. That is correct.

TRANSFERS PROPOSED FOR TRUSTEES AND MARSHALS

Senator WEICKER. All right, we will make a note of that. Don't you have somewhat of the same problem with the trustees?

Mr. ROONEY. With the marshals.

Mr. TYSON. The trustees is a separate issue.

Senator WEICKER. The same problem with the marshals vis-a-vis legislation?

Mr. ROONEY. It would be a single legislative proposal.

Senator WEICKER. What about trustees, is that legislative also?

Mr. ROONEY. Yes; but it has nothing to do with the District of Columbia.

Senator WEICKER. I understand, but doesn't that also require legislation?

Mr. ROONEY. Yes, it does.

POSITION REDUCTION

Senator WEICKER. I have questions here which I am going to submit to you for response to the record. Now how many U.S. attorney positions are reduced, 195? How do you determine where these cuts are going to be made?

Mr. TYSON. We have made a tentative cut in the activities I mentioned. We do not have them distributed by district. We have them distributed by activity in proportion to those activities, appellate, civil, and criminal. As to which particular districts might suffer from the cut, we would make that decision.

DEBT COLLECTIONS

Senator WEICKER. You indicate one of the duties, or one of the functions of the U.S. attorneys has been debt collection, and this is one of the areas where the reduction will take place in the number of U.S. attorneys. At the present time, how much is outstanding in terms of what is owed to the United States in fines?

Mr. TYSON. The total amount outstanding is over $700 million.

Senator WEICKER. $700 million? And the collection of $700 million is going to fall upon how many shoulders here if these reductions take place?

Mr. TYSON. It will fall to sone extent on all U.S. attorneys. All U.S. attorneys have some. There are some districts which have a greater burden than others.

Mr. ROONEY. The specific reduction here is from the 1982 budget, that is from the January budget. There was an increase in the January budget for the collection activity that is not being asked for.

Senator WEICKER. I suppose the point I am trying to make, in dollar amount what are you reducing the U.S. attorneys on this function? Say you are talking about function. So here we have debt collection.

Mr. TYSON. The increase for word-processing equipment is one of the few increases that are asking for that has to do with collection of debts. The principal need we have is to improve the productivity of the attorneys and paralegals in the debt collection data.

Mr. ROONEY. The reduction is basically a bookkeeping reduction of the earlier proposal. There was a prior increase in the last administration's budget targeting that program.

LETTER FROM SENATOR MARK O. HATFIELD

[CLERK'S NOTE.—Subsequent to the hearing the subcommittee received the following letter from Senator Mark O. Hatfield regarding a letter he received from Congressman John J. Duncan, concerning scuba diving training provided by the Marshal Service. By direction of the chairman the letter has been printed in the record.]

[The information and related material appears on page 1098.]

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. All right, Mr. Tyson, I have questions as I said to be submitted and responded to for the record, but otherwise I have no further questions of you. And we have Mr. Levine for the U.S. trustees.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Position Reductions

The current request would reduce positions in U.S. Attorney offices by 195 compared with the January budget. How many vacancies are there in U.S. Attorney offices?

As of March 5, there were 450 vacant positions in the offices of the U.S. Attorneys: 123 attorney positions, 135 paralegal positions, and 192 clerical positions. The high rate of vacant positions (over 10 percent) is attributable to a combination of events beginning with employment restrictions which were installed due to the half-year funding provided for 630 new positions authorized in 1980. A succession of Executive Branch employment restrictions has further depleted the capacity of U.S. Attorneys to achieve an employment level commensurate to the number of authorized positions.

How will the new position levels be distributed?

A nationwide review of district position allocations will be conducted. Consideration will be given to such factors as the number of judges and magistrates serving in a district, the extent and makeup of a district's caseload, the level of grand jury activity, the number and length of trials, the frequency of court sessions in outlying locations, and the amount of work devoted to cases of national priority. New staffing levels for each district will be established as a result of this review, and each U.S. Attorney will be responsible for modifying the organization and the policies of his office to conform with available resources.

The budget indicates staff reductions in "low priority litigation". Can you explain what "low priority" litigation is? How will this policy affect current activities?

For criminal cases, high priority cases have been described as "those matters within the federal jurisdiction that are most deserving of federal attention and are most likely to be handled effectively at the federal level". Principles of Federal Prosecution, Department of Justice, July 1980, page 8. Conversely, low priority cases are those matters within the federal jurisdiction which are least deserving of federal attention and which may be handled effectively by another jurisdiction. The setting of U.S. Attorney priorities thus results from an individual combination of national priorities, regional problems and local law enforcement capabilities. The diminution of resources will simply require individual U.S. Attorneys to define their priorities more narrowly.

U.S. Attorneys have no choice in civil suits brought against the government but to defend the government's interest to the maximum extent of their capabilities. Low priority cases therefore are matters which are recommended for civil prosecution but which can be returned to the referring agency for resolution short of litigation. The cases not accepted for litigation will be chosen on the basis of the least harm to the public.

Reductions in Positions

The January budget requested 83 additional positions for the U.S. Attorneys - 63 of which were designated to Civil Litigation to handle debt collection cases referred by Federal Agencies. How much did the U.S. Attorneys collect in debts owed the Government last year?

Actual receipts collected by the U.S. Attorneys in 1980 totaled $234,343,561.94.

How will the reduction affect debt collection activities?

Collections work requires a knowledge of the state law and its application in connection with executions on property, foreclosures, and post judgment remedies. It also requires familiarity with a wide range of federal programs and administrative practices applicable to particular programs. Because of the limited staff available for collections work, only a few U.S. Attorney offices have been able to develop the specialized capacity necessary to perform collections functions adequately. Except for a few large offices, the collections work in most districts is the responsibility of only one employee, in some instances only on a part-time basis. Occasionally, collections work is supplemented with temporary employees, but such stopgap measures do not provide the kind of continuing capacity which is needed to sustain a high level of performance.

The increase requested in the January budget submission represented a 30 percent increase in the collections staff available to U.S. Attorneys and would have permitted the placement of sufficient additional staff in order to develop the kind of specialization needed for this work. The revised request will permit the acquisition of equipment to maintain and retrieve records more systematically and to produce correspondence and other documents more efficiently. It is thus expected to improve the productivity of existing staff and as a result improve the overall performance of the U.S. Attorneys' offices with regard to debt collection.

Since the January budget requested paralegals and clerical support for debt collection, are we now talking about using attorneys instead for these matters?

At the present time there are 215 positions in the U.S. Attorneys' offices assigned to collections work. Of that total, only 54 are attorneys. Legal issues that develop through collection work as a general rule do not entail much attorney involvement. As a result, a disproportionate number of paralegal and clerical workers are assigned to collections work. The budget request comtemplates no change either in the total number of positions assigned to collections work or in the number of attorney positions assigned to that work.

Supervision

The narrative in your January justification mentions that criminal cases are declined based on established policies; are these Justice Department policies or are they individually established by U.S.

Attorneys? How does the Justice Department coordinate policies with respect to U.S. Attorneys?

The general policies of the Department of Justice with regard to the initiation or declination of federal criminal prosecution are discussed in a recent Department of Justice publication "Principles of Federal Prosecution". As enunciated in this publication, there are many complex factors which should be considered, and applied in varying degrees, by the government attorney responsible for making a decision on whether to proceed with a criminal prosecution. Due to the volume of criminal matters and the variety of factors to be weighed, the professional competence and integrity of the responsible attorney are still the most important elements in deciding on whether to proceed in any given case.

Although U.S. Attorneys are appointed by the President, the Attorney General maintains statutory authority to supervise them and to require them to report to him on their activities (28 U.S.C. 519). The Attorney General's authority over U.S. Attorneys is exercised chiefly through the Deputy Attorney General and the Associate Attorney General with a lower level of supervisory authority diffused among the Assistant Attorneys General of the legal divisions and the head of the Executive Office for U.S. Attorneys. Control over certain matters relative to the conduct of litigation has been delegated to the various legal divisions while the responsibility for executive assistance and coordination has been assigned to the Executive Office for U.S Attorneys.

Each of the six legal divisions has, with the concurrence of the Deputy Attorney General or Associate Attorney General, established policies and procedures for the guidance of U.S. Attorneys. The regulations of the legal divisions are compiled in the U.S Attorneys' Manual which contains a separate title for the subject matter over which each division has responsibility. The divisions exercise control over U.S. Attorneys in several ways: by reserving certain decision-making authority; by requiring reports on specific events; by intervening in the U.S. Attorneys' relations with agencies outside the Department of Justice; and by conducting selected cases directly.

Although the legal divisions maintain considerable control over the U.S. Attorneys through these techniques, it should be noted that at least 95 percent of all criminal cases and approximately 60 percent of all civil cases are referred directly to U.S. Attorneys from investigative or client agencies. U.S. Attorneys are necessarily allowed substantial latitude to conduct litigation within their districts as it would be physically impossible for the divisions to participate actively in the over 200,000 cases handled each year.

Case Management System

You are requesting $3,494,000 for equipment and contractual services to continue the implementation of the case management system. The original request was $4,586,000 and 20 system manager positions. It also anticipated acceleration of the installation of the system and determined that the new positions were "crucial". There is no request for positions in this budget. How will the system manager positions be filled?

Implementation of the system in the four pilot test districts has been delayed. The PROMIS evaluation of the operational pilot systems and the development of a procurement strategy for acquisition of additional equipment are prerequisites to the expansion of the project. It is therefore unlikely that we will be able to complete the automation of any additional offices in 1982, although we will begin preliminary analytical and design work for selected districts at that time. We will be able to use systems personnel on the Executive Office for U.S. Attorneys staff to support any additional automated offices during 1982.

How many offices are served by the system? How many more will be brought in 1981 and 1982?

The Superior Court Division of the District of Columbia U.S. Attorney's office has been using an automated system since 1971. Four offices are included in the pilot phase of this project which will be fully operational in 1981. If the pilot project is successful, the plan is to begin analytical work in four large offices and eight to fifteen smaller offices in 1982.

Has the new budget request slowed implementation?

No.

Is implementation contingent on the results of the PROMIS system which is to be made operational in four districts and evaluated in 1981?

Yes.

Evaluations

The Executive Office for U.S. Attorneys has been planning for some years to increase the staffing level of its field activities section to provide for evaluation of U.S. Attorney offices. What is the status of this upgrading? Were reductions applied to this function? If so, can and will this important management functions be augmented with resources from other sources?

Six additional positions for field activities were requested in 1981. However, congressional action on the 1981 request deprived the Executive Office of the six additional positions intended for field activities. The increase requested for 1981 has not been renewed in the 1982 request.

At the present time, there are three attorneys and one secretary employed in the field activities section. Due to the inadequacy of this staff the Executive Office is attempting to recruit senior Assistant U.S. Attorneys to conduct evaluations on an intermittent basis. U.S. Attorneys have been asked to submit the names of candidates for this work, but the participants in this experiment have not yet been chosen. After a brief orientation, the Assistant U.S. Attorneys accepted for this program will be assigned to conduct surveys in 8 to 12 offices over a nine-month period of time. Because this experiment has not yet been implemented, it is not possible to assess the effectiveness of this attempt to augment the field activities staff.

U.S. TRUSTEES

STATEMENT OF RICHARD L. LEVINE, DIRECTOR AND COUNSEL, EXECUTIVE OFFICE FOR U.S. TRUSTEES

ACCOMPANIED BY:

KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION

CHARLES R. NEILL, CONTROLLER

WADE B. HOUK, DIRECTOR, BUDGET STAFF

BUDGET REQUEST

Senator WEICKER. Our next witness is Richard L. Levine, Director and Counsel, Executive Office for U.S. trustees. Mr. Levine is accompanied by Kevin D. Rooney, Assistant Attorney General for Administration, Charles R. Neill, Controller, and Wade B. Houk, Director, Budget Staff.

Mr. Levine, we will be pleased to hear your statement with regard to your request for $270,000, which as I understand it winds up the pilot program for the U.S. trustees. So why don't you give full vent to all of your feelings and emotions on this change. The floor is yours.

Mr. LEVINE. I appreciate the opportunity, Senator.

Senator WEICKER. I neither started this program nor am I ending this program, so I sit with great impartiality.

Senator BUMPERS. Well, I can't say that, Senator. I am not impartial on anything.

Mr. LEVINE. Good morning, Senator.

Senator BUMPERS. Good morning.

REQUEST TO TERMINATE PILOT PROGRAM

Mr. LEVINE. After some agonizing, the position of the administration, is that the U.S. trustees program, although I think efficiently run and well-handled generally, does not rise to the level of priority that many of the other matters in the Justice Department rise to. In other years, in other times, perhaps the request before you would have been different. But compared to the U.S. trustees, as good as we think we are, people like Mr. Tucker in Boston or Mr. Picard in New York, do not save lives, as the FBI does, so we have to appreciate the priorities.

We may save property to some extent, but certainly not to the extent of the FBI. Our priority does not rise to the level of, for instance, the Immigration Service.

I am personally satisfied the Attorney General has given this a lot of thought. This is not a decision the Attorney General reached superficially. He decided there had to be cuts somewhere, and the appropriate cut is for a program like this, which after all didn't exist for the first hundred or so years of bankruptcy in our republic.

Therefore, while in the context of bankruptcy this may be significant, compared to all the other matters that require priority, this doesn't reach that level. It was an experimental program after all. It is proposed for termination only about 3 years earlier than otherwise would have been the case. And 1984 was the scheduled date by which Congress had to make a determination as to whether it would change the way bankruptcy administration should be effected.

So what is being proposed here is that April 1, 1984 be moved to October 1, 1981. I think that is the thrust of the administration's position, not that the program isn't working or is working. I don't think anyone can tell that for sure because the evaluation hasn't started. But there is a question of saving lives, there is a question of saving property, and as I say, the U.S. trustees cannot honestly say they do save lives, and if they save property it is not to the extent others do.

I believe that is the administration's position.

PROPOSED TRANSFER TO THE JUDICIARY

Senator WEICKER. Let me then ask my one question and I will turn it over to Senator Bumpers. Let's talk about saving money. Obviously again this program didn't just drop out of the sky as somebody's cute idea on a Saturday evening. There was an established need for it, either in terms of substance or the treatment of bankruptcy procedures and proceedings in this country, or in terms of the dollar cost of however those were handled in the past.

Now you say no evaluation has taken place, but obviously the matters under consideration by these trustees aren't going to go away. So now what happens to them?

Mr. LEVINE. They would have to be shifted, Senator, to somewhere in the judiciary, and I believe the Attorney General testified last week before the House Judiciary Committee and possibly before you yesterday saying he was intending to speak with the Chief Justice in order to work out some way to make the transition.

Senator WEICKER. The only point that I am trying to make is that there maybe a dollar cost that attaches to each one of these proceedings, and it doesn't make a bit of difference to the taxpayer whether it's the Department of Justice or the courts.

Mr. ROONEY. If I may respond, Mr. Chairman. Mr. Levine has made the point that faced with reduced Federal personnel, this was one area which was not critical to the Department's Federal program.

The other point is that the Federal judiciary has not reduced the resources of this program since the trustees' program was started in the executive branch, and it is our understanding that the judiciary is asking for increases. We are confronted as a Department with the resource issue, where do we want to put the employees that would be on our rolls, and we have a situation here where the program is a pilot program.

The program seems to have worked out and yet Federal employment is continuing to grow in both the executive and judicial branches. This type of program doesn't necessarily fall within the judiciary's jurisdictions, but it's still continuing to grow in the judiciary branch and we have no control over that.

This is probably the principal reason why the Attorney General is making this decision, and it was a hard choice. I discussed it with the Chief Justice, because it is an important program and yet we can't afford both.

Senator BUMPERS. I just have this one question. With the number of bankruptcies almost doubled in the past couple years it seems like a poor time to eliminate this program. Normally you won't get any squawk from Senator Weicker or myself to eliminate a program, but I am wondering whether this is penny-wise and pound-foolish.

Mr. LEVINE. With *x* dollars to go around something has to go.

DISTINCTION BETWEEN "TRUSTEES" AND U.S. TRUSTEES

Senator BUMPERS. You have to have trustees, don't you, in any bankruptcy?

Mr. LEVINE. You have to have trustees where there are assets.

Senator BUMPERS. Is it mandatory a trustee be appointed?

Mr. LEVINE. Yes, sir.

Senator BUMPERS. And he has to make an investigation of the allegations contained in the petition. Who does it normally?

Mr. LEVINE. In all fairness to the administration, if I could spend 1 minute articulating what is involved here, because the way the statute is drafted, there was a poor choice of words and it's part of the confusion. I can say that because I know neither of you gentlemen drafted it.

The word "trustee" has two meanings in the bankruptcy code. Every case, other chapter II cases, requires a trustee to be appointed. That is the "trustee" as we all know the term from hearsay and hopefully not from experience.

Every chapter 7 case and every chapter 15 case must have a trustee—with a little "t." The U.S. trustees are a separate matter and the confusion in the statute is that the word "trustee" is used to define both.

The U.S. trustees are the functionaries who are designated by the Attorney General. There are 10 of them handling 18 districts. They are experimental. New England is an entire region. Boston has one U.S. trustee. I mention that because he has the most districts under his control. He handles four districts.

In those 18 pilot districts the U.S. trustee appoints the trustees in each case. There is an option for creditors to elect the trustees but that is almost never used. Last year out of 78,000 chapter 7 debtors there were only 35 elections. In the nonpilot districts, which this program would revert to, the bankruptcy judges would then appoint the trustees.

Congress had originally taken that away from the judges because the image of a judge having to adjudicate a contested matter when one of the parties was his or her own appointee was thought to be very detrimental to the system. That is in part how the U.S. trustees came to be.

The view by Congress was that it is better that the judges not both appoint and adjudicate, and that judges should stay out of the administration of cases, which entails improper ex parte communications. But if you do give this involvement back to the judges, the job will still get done. Trustees will be appointed, not with the same public sense of confidence, but they will get appointed. They will be appointed by the

judges just as they are here appointed now in the 70-some odd districts that don't have U.S. trustees.

FEES IN BANKRUPTCY CASES

Senator BUMPERS. Let me pursue this just a moment. I never handled a bankruptcy case in my life. I represented a few creditors. I must say I am sorry now I didn't get more deeply involved in the 1978 amendments because I still think it is the biggest rip off in America. One of the reasons I think that is is because I have seen trustees keep bankruptcies open an inordinate length of time because they are getting big fees out of this, and the court awards them a fee.

Now who has been paying the fees, for example that would normally be paid out of the assets of the debtor, if there are any assets? For example, you take a debtor who has $1 million in assets and $5 million in debts. I would probably advise the creditor to not show up because the trustee and the attorneys are going to get that million dollars in assets.

That is what it's going to take to liquidate that estate and normally that bankruptcy, and they will normally keep it open whatever length of time it requires to make sure they get all that million dollars.

Now that is a very harsh thing. I am not trying to indict everybody ever involved in a bankruptcy case. I am just giving you my personal experience. My question is who's been paying these trustees that have been paid by the Federal Government? They have been line item jobs?

Mr. LEVINE. No, sir. The U.S. trustees are salaried employees of the Department of Justice, the 10 of them. So they have nothing personal to gain whether a case stays open 1 day or 10 years. Only the railroad cases regularly stays open that length of time.

Senator BUMPERS. These trustees are the ones covered under this?

Mr. LEVINE. Yes, sir. The trustees in cases are paid out of the assets, with one very important exception that I will address in a minute. The trustees are paid to the extent that there are assets in the case to pay them with.

In the U. S. trustee districts, the U. S. trustee has been given standing by Congress to object to fees, because very often the feeling was, that creditors, having the attitude you have reflected Senator—and that is the attitude of 99 percent—don't bother to show up. In all cases the judge has the final word.

So the answer to your question is that they are paid out of assets, with the one exception I will get to—they are paid out of the assets of the estate pursuant to approval of the court, subject to objections by any party; in the U.S. trustee districts, the U.S. trustee is one party who could object.

Congress, however, has set a maximum limit on fees. I must tell you frankly Senator, that this maximum limit is universally regarded by all concerned as too low, both by those who are reformists and those who are not. There is one gentleman in the audience who represents an organization of lawyers which is very active in bankruptcy matters, and I know his organization thinks that what Congress has set as a maximum is much too low. Since the maximum doesn't come out of Federal funds I think I certainly agree.

Senator BUMPERS. This is a maximum percentage, not a sum?

Mr. LEVINE. One percent. No trustee can collect more than 1 percent in an operating case.

Senator BUMPERS. That is too low. I don't blame them. I'd be upset about it too.

Mr. LEVINE. That is not out of appropriated funds, that is only out of the assets of the estate. So that has caused somewhat of a crisis.

FEES IN CASES WITH NO ASSETS

Senator BUMPERS. What happens where there are virtually no assets?

Mr. LEVINE. That was the other case I was referring to earlier. We estimate of 92 percent of all chapter 7 liquidation cases, and there were about 60,000 filed in just the pilot districts last year, 92 percent are no-asset cases.

That is in large part because Congress, as you know, has created exemptions. A married couple can now retain $15,000 in addition to a car, an unlimited amount of furniture so long as no one item exceeds $200, and all sorts of other goodies.

Senator BUMPERS. I can't believe I sat through all that and—go ahead.

Mr. LEVINE. Besides, in the 92 percent of the cases which have no assets, Congress has provided that for a creditor to file a bankruptcy proceeding there shall be a $60 filing fee. Congress has provided that every trustee,whether or not there are assets in the case, can get $20 from the $60 filing fee, and that is what trustees get in no-asset cases, $20.

I might add further, even though they say there are no assets in these cases, it might take a week or two of work to determine there are no assets. Because a no-asset case would include, for example, a case with $1 million property with secured debt. So the trustee may spend a lot of time trying to attack the secured creditor.

Senator BUMPERS. Don't we have a lot of people who do this like filling out income tax returns? They are trustees in so many cases they do very well on volume?

Mr. LEVINE. As a matter of fact, Senator, that is a very sophisticated observation, and you are right, at least in major metropolitan areas. In Los Angeles, for example, we have so many cases that we can give all the cases on any one day to a single member of the private panel of trustees, and these trustees can establish a routine for $20 a case, and they do better for salary than some of our employees.

In the rural districts you say, "if you take some cases, we will give you in exchange for the small cases a large case." They laugh at us and say, "good, see me in 1988 when you have a large case." And I have a file on copies of resignations. They are in Maine, in the Dakotas, where the person can't even get their mileage back on the $20 collection let alone anything else.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I have no further questions. There are others to be submitted to you and responded to for the record.

Mr. LEVINE. Thank you, Senators.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

During the last two years, what has the bankruptcy trustee program accomplished?

To date, there have been thirteen district offices or suboffices equipped and staffed to handle the statutory responsibilities of U.S. Trustees in the 18 pilot districts. Considerable time was devoted to adapting the administrative procedures in each pilot district to conform with the variable requirements which arise from local court rules.

The qualifications for serving as a member of a panel of trustees on Chapter 13 cases (repayment plan) were developed to insure competence, prevent nepotism, avoid prejudice, and provide professional expertise and responsiveness to the needs of affected parties.

Panels of private trustees, available for appointment in Chapter 7 (liquidation) cases, have been established in all of the pilot districts.

The U.S. Trustees appointed trustees in every Chapter 7 case filed in the pilot districts (58,137 cases) during fiscal year 1980, except for 35 cases in which the trustees were elected by creditors.

The training of panel trustees has been an important contribution of the U.S. Trustee program to the quality of bankruptcy case administration in pilot districts. During the 1980 fiscal year, the U.S. Trustees conducted 120 training sessions for the private trustees. Related to training of private trustees is the education of the public, the bar, and other professionals involved in bankruptcy. During fiscal year 1980, the U.S. Trustees, Assistant U.S. Trustees and the Director of the Executive Office have personally participated in 177 public appearances; other members of their staffs have made 49 such appearances.

In Chapter 11 (business reorganization) cases, the U.S. Trustees have actively involved creditors in cases, primarily through the formation and convening of creditors' committees. For the 1980 fiscal year, the U.S. Trustees appointed 1,100 creditors' committees. In some districts, because there was no tradition of active creditor participation before the pilot program was created, the establishment of effective creditor committees is an important contribution.

In fiscal year 1980, the U.S. Trustees filed 264 motions with the Bankrutpcy Court seeking the appointment of a trustee or examiner in Chapter 11 cases, and assented to 50 motions filed by other parties. The courts denied only 24 of these motions, and another 30 were withdrawn because the culpable party voluntarily altered its behavior. A trustee in a Chapter 11 case operates the debtor's business, can sell the debtor's assets, and can propose a plan of reorganization. An examiner investigates the debtor's affairs and makes important recommendations on the further activities of the business. During the 1980 fiscal year, 209 trustees and 43 examiners were appointed to serve in pilot district cases as the result of U.S. Trustee involvement in this area of bankruptcy administration. Since October 1, 1979, the U.S. Trustees have monitored the business operations of every Chapter 11 case filed, and they estimate that in no more than a half-dozen cases have the creditors suffered unnecessary losses.

Wherever possible, the U.S. Trustees have been encouraging and training the committees of creditors to undertake this monitoring function.

The U.S. Trustees have been active in monitoring fee requests in accordance with 11 U.S.C. §330. These fees are entitled to payment before unsecured creditors receive their distribution of assets; the larger the fee granted, the less is available for creditors. Attempts to have disproportionate fee requests reduced have met with success, as have efforts to support requests for fees which appropriately compensate the contribution of bankruptcy attorneys and accountants. During the 1980 fiscal year, the U.S. Trustees filed 60 objections to fees; in only 4 cases were the fees granted as originally requested. In all but one of the remaining cases, which was pending at the end of the year, the court reduced the fees or the petitioner voluntarily amended the request.

The U.S. Trustees have developed so-called "blanket" bonds enabling all trustees in a district to be covered by a single bond. This represents a considerable saving to creditors and trustees, and contrasts with the system in non-pilot districts under the former Bankruptcy Act, where the trustee must obtain a bond for each case, instead of for each district.

Are there mandatory functions required by law to be fulfilled by the Department of Justice in bankruptcy programs?

Yes. The statutory functions are contained in §330 and Chapter 15 of Title 11 U.S.C., and Chapter 39 of Title 28 U.S.C. The primary functions are provided below.

1. Establish panels of private trustees to serve in Chapter 7 cases, 28 U.S.C. 586 (a)(1).

2. Appoint trustees (from a previously selected panel) in all Chapter 7 cases (liquidation cases). 11 U.S.C. §15701.

3. Appoint trustees or examiners (when ordered to do so by a court) in Chapter 11 cases. 11 U.S.C. §151104(c).

4. Appoint (subject to approval of the Attorney General) and supervise standing trustees in Chapter 13 cases. 28 U.S.C. §586.

5. Set bonds for trustees. 11 U.S.C. §15322(b).

6. Appoint and organize creditors' committees in Chapter 11 cases. 11 U.S.C. §151102 and 28 U.S.C. 586 (a)(3).

7. Supervise statutorily-mandated "§341 meetings" of creditors (formerly called "First Meetings of Creditors"). 28 U.S.C. §586(a)(1) and (3); 11 U.S.C. §341(c), and §15434; and Interim Rules of Bankruptcy Procedures.

8. Insure administration of operating Chapter 11 cases. 28 U.S.C. §586(a)(3).

9. Make sure all moneys are in insured accounts, i.e., in banks insured up to $100,000 (FDIC or equivalent), and with pledged assets of depository over that amount. 11 U.S.C. §15435. §15345.

10. Investigate whether or not debtor should be granted discharge. Investigation can be ordered by the court, whether or not U.S. Trustee otherwise wishes to conduct such investigation. 11 U.S.C. §15727(a).

11. File motions in court for appointment of trustee or examiner in Chapter 11 cases. 11 U.S.C. §151104(a).

12. Review fee applications. 11 U.S.C. §330.

If legislation is not enacted, what will be needed to carry out your responsibilities?

Prior to the Reagan Administration's proposal to eliminate the U.S. Trustees' program in the Department of Justice, the January version of the President's 1982 Budget included for U.S. Trustees a total of 167 positions, 184 workyears and $7,584,000. Included in that request was a revised 1981 estimate for U.S. Trustees involving 207 positions, 174 workyears and $7,381,000.

In what ways does the responsibility of the Justice Department differ from that of the Courts in bankruptcy matters?

The Department of Justice administers cases to determine that they are operating successfully on a day-to-day basis. Except for appointing trustees and creditors' committees, the Department can only raise issues before courts, but cannot actually render final decisions on contested matters. That is reserved to the courts. Put simply, the courts cannot become involved in the administration of cases, and the U.S. Trustees do not become involved in the making of judicial determinations.

With the substantial increase in bankruptcy cases of the last two years, what will the impact of this budget decision be in the disposition and settlement of bankruptcy matters?

One of the concerns raised during the testimony was a potential problem in the administrative continuity of the 125,000 cases expected to be handled by U.S. Trustees in the 1981 fiscal year. Any disruption in the continuity would delay the disposition of any cases pending at the time the cases are transferred to the judiciary. The length of time taken by the Judiciary's employees to familiarize themselves with matters to be transferred will determine the ultimate impact on settlement of any cases so transferred. Unsecured creditors, including the United States, will probably have to wait longer for their distributions of assets. Higher fees and some depletion of assets may result from the attendant delays. However, it is too early to tell whether this budget decision will affect the trustee distributions any differently from the impact already felt in both trustee and non-trustee districts and caused by the increased number of filings.

U.S. Marshals Service

STATEMENT OF WILLIAM E. HALL, DIRECTOR

ACCOMPANIED BY:

LLOYD A. BASTIAN, ASSISTANT DIRECTOR FOR PLANNING, BUDGET AND ADMINISTRATION

HOWARD SAFIR, ASSISTANT DIRECTOR FOR OPERATIONS

KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION

BUDGET REQUEST

Senator WEICKER. Our next and last request is that of the U.S. Marshals Service and the appropriation for support of U.S. prisoners. The amount requested for the Marshals Service is $100,946,000, a decrease of $2,676,000. This amount, I understand, would be further decreased if the Congress approved your request to transfer the responsibilities for supporting the D.C. Superior Court to the District of Columbia.

The other segment of your request relates to the $25,600,000 needed for care of the U.S. prisoners in non-Federal institutions.

Appearing on behalf of the U.S. Marshals Service is William E. Hall, Director, accompanied by Lloyd A. Bastian, Assistant Director for Planning, Budget, and Administration; Howard Safir, Assistant Director for Operations; Kevin D. Rooney, Assistant Attorney General for Administration; Charles R. Neill, Controller, and Wade B. Houk, Director, Budget Staff.

Senator WEICKER. We will be pleased to hear your statement.

Mr. HALL. Good morning, Senators.

Do you prefer I read my statement in its entirety?

Senator WEICKER. We will accept the statement in its entirety.

Mr. HALL. I am pleased to have the opportunity to appear before the subcommittee today in support of the 1982 appropriation request for the U.S. Marshals Service.

With your permission, I will submit the statement for the record.

A brief summary is as follows. Our request provides for 1,968 positions and $100,946,000, which is a net decrease of $2,975,000 and 209 positions below the anticipated appropriation of 2,177 positions and $103,921,000 for 1981.

The administration is considering a legislative proposal to relieve the Marshals Service of the responsibility for serving the superior court of the District of Columbia, which, if enacted, will result in a further reduction of 88 positions and $3,855,000 from the Service's request.

The budget request includes $4,376,000 for uncontrollable increases, $4,675,000 in decreases for nonrecurring costs, and increases of $274,000 for the witness security program, $221,000 for U.S. marshals training, $1

million for handling of Federal prisoners, and $679,000 and four positions for automatic data processing and communications systems.

The Service is also requesting $25,600,000 for the support of U.S. prisoners appropriation an increase of $3 million over the amount available in 1981.

This concludes my summarization, Mr. Chairman. Of course I will be happy to answer any questions.

Senator WEICKER. Thank you, Mr. Hall.

TRAINING ASSISTANCE—KNOXVILLE

The committee is informed $27,200 was spent to provide tactical training for the Knoxville, Tenn. police in preparation for the International World's Fair, including a scuba diving course.

Why did the Marshals Service provide the Knoxville police this training instead of the FBI, which spends almost $17 million a year on State and local training? And how did the Marshals Service acquire a capability in scuba diving and the tactical deployment of aircraft?

Mr. HALL. The special operations group was founded in 1971, 10 years ago. It is a highly trained, highly competent force which responds to all situations when the Attorney General directs it to do so.

At the time the city Knoxville requested assistance, the Special Operations Group had not been involved in missions during fiscal year 1980. For the Group to be an efficient and highly competent force, it needs to be trained systematically and regularly.

At the time the city of Knoxville requested of Attorney General Civiletti that the Marshals Service assist them, it seemed that this would be an excellent opportunity for us to use this as a retraining exercise. There were 14 Special Operations Group people involved in this training. It cost $27,200. The period of time was 2 weeks.

I think it was resources well spent considering the fact that within 6 weeks the entire Special Operations Group was deployed by the Attorney General at the direction of the White House to the Cuban refugee situation; initially at Key West, Fla. and later for security at Elgin Air Force Base. They remained deployed for 5 months.

Senator WEICKER. Wait a minute. We jumped from Knoxville to Cuba.

Mr. HALL. You can't have a ready force that is not trained. We were using this as an opportunity.

Senator WEICKER. I'm going to tell you if they hadn't been together for the whole year, we ought to eliminate the unit.

Mr. HALL. The unit was used for 5 months continuously after Knoxville to handle the Cuban refugee situation.

Senator WEICKER. I'll tell you what this exercise sounds like to me. It sounds like a lot of political nonsense. I have no doubt having a tactical unit with scuba diving training is necessary to perform duties at the direction of the Marshals Service. I object to them sitting around and needing something to get in shape and they accomplish that by training the untrained.

That kind of logic might float in this town but not as far as I'm concerned.

Mr. HALL. Let me explain further. This is not people that this is all they do. They are volunteers who perform regular deputy work day in and day out.

This is not the Group's full time assignment. They are regular deputy U.S. marshals assigned to our district offices throughout the United States, who have volunteered and been selected to be a part of the Special Operations Group. They are continuously trained and maintain their readiness for emergency law enforcement duties that may be assigned by the Attorney General.

Senator BUMPERS. These people are volunteers?

Mr. HALL. Yes. sir.

Senator Bumpers. What the h--- are we squawking about?

Senator WEICKER. We are paying $27,000.

Mr. HALL. These people are trained several times a year as a group. They are regular deputy marshals. This is not their only duty. They only perform this when they are assembled. It's necessary to assemble the Group several times a year to keep them in a state of readiness.

They had not had any training up to that time and this seemed like an opportunity to do that and accomplish two missions. I don't think there is anything at all wrong.

Senator WEICKER. I do my friend. We are not talking about walking across the street. You are talking about scuba diving capabilities. If you are going to set out to train somebody else, you ought to be in top-notch shape.

Mr. HALL. They are.

Senator WEICKER. You said this was to bring them up to par. That is hardly the time to be training somebody else. If I am going to be trained, believe me I would consider myself right now not in a position to train somebody else as far as scuba diving. I have not been down for a couple months.

Mr. HALL. I am not going to apologize for the Group. I think they are the best in the country.

Senator WEICKER. I am going to question the fact they are being used in this capacity. I am not going to dispute their use. Obviously it was a subsequent exercise, it probably had a great deal to do with jobs of the U.S. marshals office.

I don't consider the Knoxville, Tenn. International World's Fair that kind of operation. And I am glad to know you have this kind of money. That is good. My staff person here informed me prior to your appearance that the situation was a little tough in the sense that the Marshals Service had been consistently chopped back as to funding while the duties have been increased.

Well, I will tell you, I am not in much of a frame of mind after this little piece of testimony to go ahead and do anything about your decrease.

SECURITY AT CONGRESSIONAL HEARINGS

The Marshals Service is already spending more than $112,000 in fiscal 1981 to date in providing security for congressional hearings. We now have a trained U.S. Capitol police force of 1,263. Why is it necessary for the Marshals to provide security for congressional hearings?

Mr. HALL. The situation pertains to witnesses who are appearing before congressional hearings. The Marshals Service's responsibility is to protect these witnesses. I don't believe that responsibility has been delegated to the Capitol police.

I am not questioning their capability, but if there is a witness involved in the security program it is our responsibility to protect that witness's life.

Senator WEICKER. Do you have a listing of the hearings and persons involved?

Mr. HALL. Yes, we do.

Senator WEICKER. I want that submitted for the record.

[The information follows:]

LISTING OF INDIVIDUALS INVOLVED IN SECURITY AT CONGRESSIONAL HEARINGS

The following individuals were made available to the Senate Permanent Subcommittee on Investigations for preparation and testimony for hearings conducted December 15–17:

Jack Adler
Arturo Beltran
Robert Boumis
Robert Breindel
Vivian and Steven Calimano
Joseph Cantalupo
Charles Carlo
Ken Cassie
Gerald Losta
William Gabler
Thomas Gascoyne
Gary Haak
Charles Keck
Beverly Lehman
Richard LoCicero
Paul Martin
William Montello
William Noriega
Sanford Rafsky
Rodney Starkweather
Alan Stein
Jerome Sterlieb
Max Tiption

Harold Kauffman appeared before the House Commerce Committee on December 15, 1980.

Michael Clemente, Russell Buffalino, and Tino Fiumara appeared before the Senate Permanent Subcommittee on Investigations on February 26, 1981. These three individuals are not participants in the witness security program. The Senate, however, asked that witness security specialists provide protection for security reasons.

CUBAN REFUGEE SITUATION

Senator WEICKER. Senator Bumpers?

Senator BUMPERS. Mr. Hall, you will be happy to know you have one friend. I was just curious whether you know how much money the U.S. Marshals Service spent on Cuban refugees in 1980?

Mr. HALL. $2,064,000.

Senator BUMPERS. Do you still have marshals there?

Mr. HALL. Yes; we are still involved at Fort Chaffe, Ark.

Senator BUMPERS. How many?

Mr. HALL. About 16.

Senator BUMPERS. How many marshals did you have assigned to the Cuban refugee problem maximum?

Mr. HALL. Approximately 116.

Senator BUMPERS. How many marshals do you have?

Mr. HALL. Our operational force is 1,682.

Senator BUMPERS. You had over a hundred assigned to the Cuban problem?

Mr. HALL. Yes, sir.

Senator BUMPERS. There again I will tell you just as I did Mr. Levine before. Normally I don't object to a request for a reduction in positions or money, but Senator Weicker has said, and I think this is the case, the Marshals Service has continually been cut back while additional duties are put on them.

WITNESS SECURITY PROGRAM

Did you take all these witnesses who paraded before Senator Nunn's committee recently?

Mr. HALL. Yes, we did.

Senator BUMPERS. How many people do you have on the witness protection program? I mean how many witnesses do you have?

Mr. SAFIR. 3,515.

Senator BUMPERS. 3,515 witnesses that you are protecting?

Mr. SAFIR. That is active and inactive, and that does not include family members. Each witness has an average of two and a half family members.

Senator BUMPERS. What was the average number you were protecting last year?

Mr. SAFIR. 1,200 active.

Senator BUMPERS. Incidentally, those witnesses are paid, are they not?

Mr. SAFIR. They receive subsistence.

Senator BUMPERS. Does that come out of this program?

Mr. SAFIR. It comes out of the fees and expenses of witnesses appropriation.

SERVICE OF PROCESS

Senator BUMPERS. What do you charge for serving a subpena?

Mr. HALL. It runs an average of about $3, plus 12 cents a mile.

Senator BUMPERS. Nationwide that is the average charge?

Mr. HALL. Yes, sir.

Senator BUMPERS. Is it uniform throughout the country?

Mr. HALL. Yes.

Senator BUMPERS. Are those fees fixed by us or by the court?

Mr. HALL. Fixed by statute.

Senator BUMPERS. Do you have a cost accounting procedure to know what it costs you to serve those?

Mr. HALL. The average cost is approximately $18.

Senator BUMPERS. Have you ever squawked to Congress about that?

Mr. HALL. We have raised the question numerous times with the Department, hoping legislation would be proposed that would take the Service out of the private process business; or that the Attorney General be allowed to set the fees at a cost-effective level.

Senator BUMPERS. How much did you spend last year on service processing, and how much did you take in?

Mr. BASTIAN. We have Government process and private process.

Senator BUMPERS. Does the Marshals Service get compensated by anybody for the Government processes?

Mr. HALL. No.

Senator BUMPERS. So you get nothing for that. How much then for the civil, nongovernment side?

Mr. HALL. Approximately $3.5 million.

Senator BUMPERS. How much did you take in?

Mr. HALL. It goes into the general fund of the Treasury, not into our appropriation.

Senator BUMPERS. So you don't get that at all. You just spend money to serve the process but you don't recoup anything?

Mr. HALL. That's correct. The fees go to the Treasury.

Senator BUMPERS. I bet you can't get a summons served in the State court in Arkansas or Connecticut, either one, for $3. You couldn't do that when I left private practice 11 years ago.

Mr. HALL. That is why there is some reluctance to have that service eliminated. The Federal Government, is in effect, subsidizing private litigation.

Mr. ROONEY. Senator, if I may, one of the concerns raised earlier about the transfer to the District of Columbia is based upon the history. Last year we submitted a legislative proposal to remove the marshals from the service of private process, and we also had included in the estimates a budget proposal for later transmittal. The budget proposal was accepted, but the amendment to the law was not. One of the primary reasons for the Congress not acting on the legislation proposal was that there were several areas of the country where there are no private process servers. Therefore the litigants would not have the tools available to them.

Our position basically is it's a lucrative business and if the marshals were not providing the business for $2 to $3 it would cost a lot more.

JUDICIAL SECURITY

Senator BUMPERS. They are proposing you not furnish marshals as bailiffs in civil cases. Now what are you going to do if a judge orders you? If he has a particularly volatile case that he thinks has some element of danger involved, and I have been in a lot of civil cases where I thought there was fully as much danger, maybe more so than a criminal case.

Mr. HALL. Well, our first priority as far as I am concerned has always been and still is the security of the judiciary.

Senator BUMPERS. You have 648 of them to look after?

Mr. HALL. That is right, plus the senior circuit, senior district, and bankruptcy judges and magistrates.

Senator BUMPERS. Do you attend Magistrates Court and Bankruptcy Court?

Mr. HALL. Yes; what is envisioned is taking the deputies out of the court for nondangerous civil trials. Now if there is a civil trial where there is a particular threat or particular concern, we would of course provide the necessary protection. But in the routine nondangerous civil trial we would eliminate attendance.

Senator BUMPERS. But that may not be in your discretion.

Mr. HALL. I understand if it goes to the point where we cannot meet the requirements of the judiciary, the Attorney General is going to meet with the judiciary and try to reach some accommodation.

SERVICE OF PROCESS

Senator BUMPERS. You'd still like to get rid of the civil process, wouldn't you?

Mr. HALL. Yes, sir.

Senator BUMPERS. That was unfair last year, for Congress to adopt one part of that and not give you the money to do it.

IMPROVEMENTS TO LOCAL JAILS

Well, let's see, the administration also recommended to cut $3 million to improve conditions in local jails that house Federal prisoners. What is your assessment of the conditions of the jails where you keep Federal prisoners?

Mr. HALL. They run the whole gamut from less than adequate to excellent. None of them are 100 percent. The problem arises in housing Federal prisoners in local jails where the sheriff or whoever is responsible for the jail, is letting himself in for much more paperwork and burdensome administration.

Senator BUMPERS. Do they have a right to refuse to take Federal prisoners?

Mr. HALL. Yes, they do.

Senator BUMPERS. Do some of them do it?

Mr. HALL. Yes, they do. If they refuse to take prisoners, we have no way to compel them to take them.

Senator BUMPERS. Have you ever refused to put a prisoner in jail because it was such a lousy place you didn't want to take the responsibility of putting him there?

Mr. HALL. Yes.

Senator BUMPERS. What do you do?

Mr. HALL. We go to the next nearest facility. We have put them in jails 30 to 40 miles or further away.

Senator BUMPERS. I believe that is all the questions I have, Mr. Chairman.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. Fine. The other questions I have will be submitted for response to the record.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Transfer of Functions to D.C. Government

Legislation will be proposed to transfer 314 positions and $13 million from the U.S. Attorneys and Marshals to the D.C. Government.

Has the D.C. Government aready budgeted for this item?

The proposed federal payment to the District of Columbia (D.C.) for 1982 includes federal financing for the first year of operation of the D.C. Superior Court support program. However, in each subsequent year federal funding will be reduced by 25 percent and the D.C. Government will have to fund these costs from its own revenue base. Beginning in FY 1986, the D.C. Government will assume the full operational cost of the program from internal revenues.

Will funds have to be transferred to the D.C. Government to support this activity?

There is no proposed transfer in the estimates. Funds will be provided directly to the D.C. Government through the "Federal Payment to the District of Columbia" account. As described earlier, the federal payment would decrease by 25 percent each year with the D.C. Government assuming the full cost of the program from internal revenues by FY 1986. The Reagan budget contains $13,001,000 in the proposed FY 1982 federal payment to the District of Columbia to begin operations of a D.C. Attorneys and Sheriffs office in support of the D.C. Superior Court. A corresponding amount is proposed for deletion from the U.S. Attorneys and Marshals appropriation in 1982 on the assumption that the necessary legislation will be enacted.

Has the Department of Justice requested a supplemental appropriation for the U.S. Marshals Service as directed by the Senate Appropriations Committee Report for FY 1981 (Senate Report 96-949) because of the failure to enact legislation changing the current law or fees on marshals serving civil process in cases in which the government is not a party?

A supplemental request is currently before the Congress for $1,350,000 of the $2,713,000 and 257 positions reduced from the 1981 appropriation request. This request will allow an orderly phase-out of the service of private process to be accomplished instead of requring a reduction-in-force.

Does the Department of Justice support the provision unanimously adopted by the Senate as an amendment to the 1981 Department of Justice Authorization Bill (S. 2377 in 96th Congress) which preserved the service of process in civil cases, but authorized the Attorney General to raise the fees for the service to cover the cost--thereby saving $2.7 million?

The Marshals Service supports the Department's proposal to eliminate the marshals from the service of private process with certain limited exceptions specified in the proposal. However, if this proposal is not passed, the Marshals Service must continue to serve process in civil cases. Increasing the fees for these services will not suf-

fice, because the fees are deposited directly to the Treasury, and are not credited to the Marshals Service appropriation. The Marshals Service does endorse raising the fees.

Is the Department aware of the considerable disruption of litigation and debasement of the service of Orders of the Court if Marshals' service of process is stopped and that in certain areas of the country there is no reliable private process service available?

While the Marshals Service is aware that there is a belief that no reliable alternative process service is available in some rural areas, we believe that private enterprise and local officials should be given the opportunity to try to fill this gap.

Courtroom Security

We had testimony from the Judiciary last week during which concerns were raised about courtroom security provided by the Marshals. Also, the topic was discussed at the meeting of the Judicial Conference.

$93,000 is being cut in 1981 and $3 million is being cut in 1982, reducing positions in security support by 135 to reduce Marshals presence at non-dangerous civil trials. Since FY 1980 employment in security support has gone from 747 permanent positions to the 256 currently proposed — almost a 300 percent decline. This has been occuring at the same time that the number of judges is increasing. Yesterday the Attorney General pointed out that Marshals are under court orders in several districts.

How many vacancies does the Marshals Service currently have?

The Service currently has no vacant positions due to the elimination of 257 positions in FY 1981 for service of private process. The Service currently has 2,234 employees and is only authorized 2,177 for an excess of 57 employees at the present time. With the proposed FY 1982 position reductions, the Service will be authorized 1,968 positions. The Service is faced with a significant reduction-in-force during the remainder of FY 1981 and FY 1982.

With the judges concerned about lack of security, have you consulted with them about these reductions?

The Marshals Service is in daily contact with the Administrative Office of the U.S. Courts. We have kept them constantly advised of all budget matters and have requested their assistance in implementing these reductions, i.e., more cooperation regarding "non-dangerous" civil trials.

How much have you budgeted for contract guards for 1982 as opposed to 1980 and 1981?

	GUARDS	EQUIPMENT MAINTENANCE	TOTAL
FY 1980	$5,587,000	$1,703,000	$7,290,000
FY 1981	6,398,000	898,000	7,296,000
FY 1982	6,552,000	1,244,000	7,796,000

Are you not only reducing the number of marshals but also the amount for contract guards?

The number of deputy marshals for court security in civil proceedings is being reduced. The cost of GSA and USPS security guards will rise steadily due to pay increases; however, the USMS will continue to fund 287 guard positions to supplement the security provided by deputy marshals.

Is the answer to this problem to place the Marshals Service under the direct control of the Judiciary?

The Marshals Service recognizes its first priority to be the security of the Judiciary. However, there are many other missions performed by the Marshals Service that would not be appropriate under the courts.

What functions currently performed by the Marshals would be inappropriate for the Judiciary?

The following functions would be inappropriate for the Judiciary: witness security, prisoner transportation, fugitive apprehensions, and functions of the Special Operations Group in carrying out major court injunctions and special Presidential orders, e.g., Cuban entrants problem.

Private Process

Legislation to remove private process responsibility was introduced last year but not enacted. That legislation is going to be recommended again. What if any savings are reflected in your request in relation to this proposed legislation?

In addition to the private process reduction of $2,713,000 in 1981, the Marshals Service has identified an additional $1,451,000 in savings for 1982 which are reflected as a program decrease.

What have been the major problems with enacting the legislation in the past?

The major problem with enacting legislation eliminating the Marshals from serving private civil process is the concern expressed by some members of Congress and the Judiciary that adequate service would not be available in many areas.

What is your assessment of successful Congressional action this time?

The prospect of successful Congressional passage of this legislation at this time cannot be assessed. The Administration believes that the service of private process function is one which can be performed by the private sector. Further, the elimination of this subsidized service to private litigants will result in lower federal expenditures and a lower level of federal employment.

What is the view of the Judiciary about eliminating the Marshals responsibility to serve private process?

The Judiciary's view about eliminating the Marshals from serving private process is mixed. Former Deputy Attorney General, Charles B. Renfrew, requested consideration of this proposal from each Chief U.S. District Judge. He received responses from only 27 judicial districts. However, 23 of the 27 were positive in the sense that those chief judges were willing to modify local rules or take other steps to ameliorate the Marshals' problem.

Have you considered levying a charge for private process as an alternative?

While the Marshals Service believes a higher fee for serving private process is justifiable, additional funds for this service would not help the Marshals because such fees are deposited in the general funds account in Treasury and are not returned to the Marshals Service's appropriation. In addition, raising the fees would not provide the necessary positions to administer the program nor does the Administration currently plan to request the restoration of such positions.

Effect of Court Orders on Prisoner Confinement and Marshals Service Operations

A number of state and local jails which the courts have determined to be substandard are under court orders. How do these court orders affect the prisoner operations of the Marshals Service?

The United States Marshals Service (USMS) currently contracts with 800 state and local detention facilities. The number of USMS contract jails under court order has increased from 33 to 66 from FY 1979-1981 (a 100-percent increase). USMS utilization of 96 contract facilities (47 of which are major use and 33 of which are under court order) has been either terminated or severely restricted as a result of increasing inmate litigation and overcrowding. Only 21 of the 55 facilities where federal utilization has been terminated or restricted are under court order. Access to most of the other facilities was terminated unilaterally by local authorities (sheriff, jail administrator, etc.) out of fear of a court order, intervention by the Civil Rights Division or personal liability suits from federal prisoners.

Faced with a loss of jail space in the federal court cities, the Service has had to shift its prisoner population to remotely located contract jails or federal institutions equipped to handle pre-trial detainees. From FY 1980-81, the number of USMS commitments to contract jails declined by 7 percent while commitments to federal institutions increased by 5 percent. The most obvious adverse impact of this population shift has been a 48-percent increase in the Service's manpower resources (FY 1979-1981) devoted to the transfer of prisoners to and from the courts each day.

Where districts used to have one primary jail located 5-10 minutes away from the courthouse, prisoners must now be dispersed to a number of jails or housed in remote locations from the courthouse. For example, the District of Western Washington, which had been able to place all their prisoners in the King County Jail (located five blocks away from the courthouse) now transports its prisoners each 2-3 hours (one-way) to McNeil Island. The District of Nevada which had been able to use North Las Vegas and Las Vegas Metro Jails (a 10-15 minute drive within the city), must now transport its prisoners to the Metropolitan Correctional Center in San Diego, California (a 2-day trip one way). During the first two months of this operation (December-January 1981), the District of Nevada made 16 round trips to San Diego traveling a total of 11,200 miles, and using up 64 deputy workdays.

Loss of adequate jail space also has an adverse impact on the Service's National Prisoner Transportation System (NPTS). In order to remove prisoners from the hard-pressed districts of Western Washington and Oregon, NPTS tried to schedule regular (32-prisoner capacity) bus runs down the coast to San Diego, Lompoc, and Terminal Island. However, due to a lack of overnight detention space in Washington and Oregon, NPTS can utilize regular size buses only as far north as Sacramento. North of Sacramento, less efficient 9 passenger vans or costly commercial and charter aircraft must be utilized.

Listed among major objectives of the Supervision of Unsentenced Prisoners Program are two goals:

(1) To improve conditions of confinement and levels of inmate services to all prisoners in federally contracted facilities; and

(2) to identify contract facilities with substandard conditions of confinement and to "design and implement improvements projects which will provide technical, managerial, financial and equipment assistance" for major use facilities under court order.

The original budget requested a $3 million cooperative agreement program to assist facilities under court order. How does the decision to withdraw this request affect your objectives?

The objectives of the program will be restricted, leaving the Service without a capability of providing a financial incentive to local jails to continue to accommodate federal prisoners.

With the loss of funding for the Cooperative Agreement Program in FY 1982, the Service will try to improve conditions of confinement in contract jails by concentrating its field manpower resources on: (1) providing information on how to apply for participation in the Federal surplus food program, (2) providing limited on-site technical assistance, and (3) serving as a coordination point for assistance from other Federal agencies, state and national professional groups (i.e., National Institute of Corrections, American Medical Association, National Sheriffs' Association, etc). The Service will also continue to try to obtain authority for an Excess Federal Property Program to provide equipment to local detention facilities housing Federal prisoners.

You have 800 facilities under contract. In 1979, the number of jail inspections performed was 563. This declined to 290 in 1980 and is expected to remain at this level. What is the reason for the decline?

Although the Service projected that 290 jail inspections would be conducted in FY 1980, 417 were actually completed. This was accomplished by consolidating procurement functions, previously performed in the field, at headquarters. This management improvement freed field personnel to perform the additional inspections. However, the increasing demands of other priority programs made on court security and warrant investigations, drained resources from our jail inspections. Due to further staff reductions and escalating demands in other programs, our jail inspection resources will be utilized at major use facilities where the potential for problems is the greatest.

How do you expect to identify substandard facilities, improve conditions and reduce complaints if you don't increase inspections?

The Service has taken steps to realign and consolidate procurement functions from the field to the headquarters staff. This will enable the field to concentrate its limited manpower resources on inspection activity. Our remaining resources will be directed at major use facilities where the potential for significant problems is the greatest.

Leased Aircraft

On page 60 of the January justification, you state that agency-owned aircraft operating costs are estimated to be one-half of the cost of leased aircraft. You are requesting $1,000,000 to acquire and operate surplus Government aircraft. If these costs are correct why did the Service enter into the leasing contracts in 1979 and 1980?

The Marshals Service entered into leasing arrangements in 1979 and 1980 because the Service authority to own and operate agency-owned aircraft was not passed until the 1981 continuing resolution — P.L. 96-536.

Through the Marshals Service National Prisoner Transportation System, (NPTS) during the first five months of FY 1981 (October 1980 - February 1981), $568,000 was obligated for GTR costs for commercial air movement of prisoners, with an average cost per prisoner of $680. During the same five months, $577,000 was obligated for NPTS airlift charter movements of prisoners, at a cost of $184 per prisoner.

We understand that presently two aircraft are being leased for the purpose of moving prisoners. Please provide for the Committee details about the contracting process and contracts for each aircraft including:

-- *Type of contract entered.*
-- *Cost of each contract.*
-- *Publications used to solicit bids.*
-- *Bids received for each contract.*
-- *Terms of contracts.*

A firm-fixed price with indefinite quantity, with a guaranteed minimum flight hours for each aircraft contract was awarded October 1, 1980, to Sierra Pacific Airlines for a twelve month period, for an estimated amount of $1,000,000. The cost will be shared by the Bureau of Prisons through an inter-agency agreement.

The Invitation for Bid was advertised in the Commerce Business Daily, August 7 and August 13, 1980.

The bid opening was held 10:00 A.M., August 29, 1980; only one (1) bid was received.

Minimum Order Guarantee: (Contract #1M-8434 Modification #1 dated February 18, 1981). A minimum of 200 flight hours will be placed during the term of this contract for each large aircraft. It is estimated that a minimum of 240 flight hours will be placed for each small aircraft prior to February 20, 1981. If the small aircraft items totalling 240 flight hours are not utilized prior to February 20, 1981, no further flight hours are guaranteed for small aircraft and the minimum order for each large aircraft is revised to include a minimum order of flight hours to be conducted for the remaining term of this contract after February 20, 1981 not to exceed $84,500 in cost, which shall include total flight hour costs, landing fee costs and remain over night (RON) costs.

Sierra Pacific Airlines bid:

Small aircraft:	$600.00	per hour for flight hours
	100.00	per RON
	25.00	per flight arrival
	18	seating capacity
Large aircraft:	$1,500.00	per hour for flight hours
	150.00	per RON
	50.00	per flight arrival
	50	seating capacity

Informant Fund

There is a $75,000 request for an informant fund. Is it not true that many districts rotate deputies between various duties? If this is the case, to what extent does this rotation occur, and to what extent will rotation be detrimental to developing informants?

It is true that some districts have had union agreements that require the rotating of deputies between various assignments. However, each large district has a Warrant Squad which does not rotate deputies. Additionally, most districts have an enforcement specialist who is specifically trained in fugitive apprehension and investigation. This is not a rotational position and we believe that where rotation exists by journeymen deputies, it will not affect the Warrant Program.

Why wouldn't this be better handled by the FBI?

The Marshals Service has historically been involved in the fugitive apprehension mission long before the Federal Bureau of Investigation. The policy decision by the Deputy Attorney General to transfer these matters for investigation purposes as well as apprehension merely completed the presentation portion for prosecution. The only additional category for fugitives that was added to our mission was escaped federal prisoners. The Marshals Service in 1979 arrested 76 percent of all escaped federal prisoners as opposed to 46 percent arrested by the Federal Bureau of Investigation in 1978, the last year they had this responsibility. The Marshals Service reduced the overall backlog of fugitive warrants previously handled by the Federal Bureau of Investigation by 16 percent. It is the opinion of the Service that because of our unique relationship with the Courts we are the most suited agency to handle post-conviction fugitive warrants.

Incidence of Arrests

The Service reported that 27,398 USMS arrests were made in FY 1980. How many of these related to traffic or misdemeanor violations?

The revised number of USMS arrests for FY 1980 was 29,558. Of these, 11,835 arrests were related to traffic and misdemeanor violations.

How many fugitives arrests were made by other law enforcement agencies?

The number of fugitive arrests in 1980, excluding misdemeanor and traffic arrests, was 25,156. Of these, 7,433 arrests were made by other agencies.

A June 1980 Department of Justice internal audit report states that NCIC entries for warrants were not being made in a timely manner. How important are timely NCIC entries to the execution of warrants? What actions has the Service taken to improve the timely entry of NCIC data for fugitives?

Timely entry of data is important to provide all other law enforcement agencies with information on wanted persons, increasing the chance of an early arrest. The ability to accomplish an early arrest lessens the fugitive's chances to avoid detection, and the opportunity for that fugitive to commit further crime is reduced.

The Marshals Service has made it mandatory that all pertinent data be entered into NCIC immediately upon receipt of the warrant. This represents a change from the original policy of allowing 48 hours to enter this data. Compliance with this policy is ensured by a review of all NCIC entries by Enforcement Operations Division staff.

The same June 1980 report indicated that the execution of traffic warrants were not receiving adequate attention. The continued "backlogging" of these warrants represents a breakdown in the enforcement of justice and results in the loss of potential Government revenue. Why have not these warrants received adequate attention?

The non-criminal nature of these warrants make it necessary that they receive secondary priority to the execution of the primary criminal warrants.

This particular category of warrants will receive a significant enhancement once Marshals Service ADP systems are operational. These systems will afford accurate and timely action to reduce this backlog.

Presently, available ADP systems, such as NCIC, will not accept non-felony warrants.

Cooperation from the Magistrates Division, Administrative Office of the U.S. Courts, is being sought to incorporate a systematic notice of existing traffic violations with each state's department of motor vehicles to secure payment and enforce court appearances at the U.S. Magistrates level.

Questions Submitted by Senator Hollings

Court Security

The justifications state that the Judicial Court Facility Program has significantly increased the number of judges and magistrates served, yet there has been a 10 percent reduction in funded guard positions. What does this mean; for instance, how many court security officers are budgeted for 1982 and what was the level in 1980?

The number and location of federal judges and magistrates, and their responsibilities are determined by the Judiciary. Both continue to increase. The presence of marshals or their deputies at any Judicial Court Session is also being increasingly demanded as specified by 28 USC 569 (a). The USMS Judicial Facility Security Program provides funds to GSA and USPS for security guards in court building areas outside of courtrooms and chambers. In FY 1982, we will fund for 287 GSA/USPS guard positions as opposed to 317 positions at the beginning of FY 1980 - a 10 percent reduction.

The following chart displays the breakdown of the 287 positions:

FY 81: GSA & USPS	FTP	CONTRACT GUARD	TOTAL
GSA	180	80	260
USPS	27	...	27
TOTAL	207	80	287

What is the overall level of court security provided by the Marshals, GSA, and the Postal Service in terms of federal positions and contract guards?

In FY 1981, GSA and USPS are respectively providing 180 and 27 full-time guard positions. GSA is manning an additional 80 positions with guards obtained by contract from commercial sources (contract guards). In FY 1982, that number of GSA contract guards will increase due to a reduction of permanent Federal Protective Officer (FPO) positions. In FY 1981, the Service will provide the equivalent of 294 deputy positions for court security. The overall level of court security provided by the Marshals Service, GSA, and the Postal Service in terms of Federal positions and contract guards is 581.

In your own professional judgment, do you believe that we are providing adequate protection to the Judiciary?

It is our judgment that the Marshals Service is indeed providing adequate protection to the Judiciary based on available resources. It should be pointed out that the number of judicial officers (1,491) exceeds the number of available Deputy U.S. Marshals. Personal protection is a complex area that is in great measure dictated by the cooperation of the subject being protected. We are required by one or more judges, in 78 districts, to provide deputies in every trial, civil and criminal. Critical resources for dangerous trials or details are often diverted by this requirement.

In view of the personnel ceiling problem, would the Administration favor transferring the court security program to the Administrative Office?

The requirement for protection of the Judiciary demands significant resources and expertise. The Marshals Service, because of its unique relationship with the Judiciary and its other missions, i.e., execution of process, prisoner movement, witness security, etc., is the most appropriate law enforcement agency to provide this service to the Courts. The issue as to the ceiling problem is one that must be addressed by the Office of Management and Budget.

Private Process

Last year the Administration proposed elimination of the Marshals Service service of private process, but the Congress did not enact the necessary legislation. As a result we have a supplemental appropriation to continue the service of private process.

This year the Administration is again preparing the elimination of private process. What indications are there that the House Judiciary Committee will be any friendlier to this proposal this year than they were last year?.

The current emphasis on the fiscal constraints makes it necessary to find areas for which federal expenditures may be reduced. The prospect of successful passage of legislation to eliminate the service of private process at this time cannot be assessed.

How much does it cost the Marshals to serve a piece of private process and what are the current fees for such service?

The average cost to the Marshals Service to serve each piece of private process is $18.00.

The current fee charged for each piece of process is $3.00 plus twelve cents per mile.

Will the Department seek to increase the fees if private process is not discontinued?

Yes. The Attorney General should have the authority to set fees for the service of private process by the Marshals Service. The allowable fee is currently set by statute, and covers only 16 percent of the actual cost of the service of private process. Legislation is required to allow changes in the fees chargeable for this activity based on inflation and continuing studies of the actual cost of such service.

The Marshals Service will discuss with the Department whether a recommendation for legislation should be submitted to the Congress that would permit the Marshals Service to use the receipts from the service of private process rather than let the funds revert back to the U.S. Treasury.

Why does the Department drop the funds for serving private process out of their budget but treat the ending of Marshal services to the D.C. Courts differently?

From the vantage point of the 97th Congress, both the service of private process and the District of Columbia transfer require new legislation and accompanying budgetary action. No legislative proposal was included in the 1982 estimates for the service of private process because the matter was under active consideration in the Congress until almost the end of the 96th Congress. Therefore, it was difficult for the Administration to decide whether further legislative proposals would be necessary.

During consideration of the 1981 budget request a legislative proposal was submitted to relieve the Marshals Service of the responsibility of serving process in cases involving private litigants. No formal budget transmittal was ever prepared however, because the legislative proposal was not enacted. Nevertheless, funds were removed from the FY 1981 appropriations bill during the Congressional review process. Because of the experience in the FY 1981 budget, the Department will not submit a formal request to remove funds from the budget in 1982 because the reduction requested is the second phase of a proposal already under active consideration.

With regard to the D.C. Superior Court, the Administration is studying proposals to establish an autonomous judicial system in the Government of the District of Columbia (D.C.) by granting the D.C. Government full authority over functions provided by the Marshals Service including the custody of prisoners convicted of local violations and the provision of security of the D.C. Superior Court. If we are satisfied that such a comprehensive review supports the transfer of these functions, we shall propose the necessary legislation to Congress.

Change in Judges and Marshals Service Personnel

Do you have a chart comparing the deployment of the 117 additional Judgeships by district, and the additional Deputy Marshals that were made available to serve these Judges?

The following chart compares the deployment of the 117 additional district court judges and the change in USMS district personnel between October 1978 and September 1982 (estimated).

DISTRICT	CHANGES IN JUDGES	CHANGES IN USMS PERSONNEL[a]
N/Alabama	3	-4
M/Alabama	1	1
S/Florida	6	-1
Arizona	3	-2
E/Arkansas	2	2
N/California	1	-9
C/California	1	-10
E/California	3	-4

DISTRICT	CHANGES IN JUDGES	CHANGES IN USMS PERSONNEL[a]
S/California	2	-8
Colorado	2	-1
Connecticut	1	-2
N/Florida	1	1
M/Florida	3	-7
N/Georgia	5	-4
S/Georgia	1	1
N/Illinois	3	-19
C/Illinois	1	-1
N/Indiana	1	-2
S/Indiana	1	-4
S/Iowa	1	—
Kansas	1	-4
E/Kentucky	3	-1
E/Louisiana	4	-7
W/Louisiana	1	-2
M/Louisiana	1	—
Maine	1	—
Maryland	2	-7
Massachusetts	4	-2
E/Michigan	3	-8
W/Michigan	2	1
Minnesota	2	-3
E/Missouri	1	-1
W/Missouri	2	-5
Nevada	1	-2
New Hampshire	1	-1
New Jersey	2	-10
New Mexico	1	—
N/New York	1	2
E/New York	1	-10
W/North Carolina	1	1
M/North Carolina	1	-3
E/North Carolina	1	-2
N/Ohio	2	-7
S/Ohio	1	-2
N/Oklahoma	1	1
W/Oklahoma	1	-1
Oregon	2	-1
M/Pennsylvania	2	-2
Puerto Rico	4	2
South Carolina	3	-3
South Dakota	1	-3
M/Tennessee	1	1
N/Texas	3	-5
E/Texas	1	-1
S/Texas	5	-6
W/Texas	1	-2
W/Virginia	2	—
E/Virginia	2	-1

DISTRICT	CHANGES IN JUDGES	CHANGES IN USMS PERSONNEL[a]
Utah	1	1
W/Washington	2	—
S/West Virginia	2	-2
E/Wisconsin	1	-3
W/Wisconsin	1	-1
Canal Zone	-1	-3
Totals	117	-175

[a] The Marshals Service was provided 117 additional deputies as a result of the Judgeship Act. However, the manpower resources available to the Service are allocated by formula to the district offices and the 117 additional positions cannot be identified. The data provided is the net change in the district offices since the enactment of the Judgeship Act.

UNITED STATES MARSHALS SERVICE
COMPARISON OF NUMBER OF JUDICIAL OFFICERS TO USMS EMPLOYEES

	October 1978	March 1981	September 1982 (Est.)	Percent Change 78-82
1. Number of USMS District employees	1,906	1,972	1,668	-12.5
2. Number of Judicial Officers Served[1/]	1,410	1,491	1,718	+21.8
3. Number of Headquarters employees	120	131	112	-.7
4. Number of Operational employees (not assigned to districts)	102	131	125	+22.5

1/ Includes: Circuit, Senior Circuit, District, Senior District, Magistrates, and Bankruptcy Judges.

U.S. MARSHALS EMPLOYEES BY CATEGORY

	10/1/78	3/16/81	Estimated 9/30/82	Diff. 10/78-3/81	Diff. (Est.) 10/78-9/82
United States Marshals	94	94	94	--	--
Chief Deputies	93	84	94	-9	1
Supervisory Deputies	111	108	90	13	-21
Deputies	1,293	1,354	1,115	61	-178
Administrative (Field)	315	332	275	17	-40
Headquarters Personnel	120	131	112	11	-8
Operational Employees[2/]	102	131	125	29	23
Totals	2,128	2,234	1,905	+106	-223

2/ Not Assigned to District Offices.

United States Marshals Service
Comparison of Number of Judicial Officers to USMS Employees

District	Status when Judge-Ship Bill Enacted 10/78		Status as of 3/16/81		Estimated Status as of 9/30/82		Change 10/78-3/81		Change 10/78-9/82	
	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.
N/Alabama	20	22	23	21	26	18	3	-1	6	-4
M/Alabama	9	12	10	14	12	13	1	2	3	1
S/Alabama	7	9	7	12	7	10	--	3	--	1
S/Florida	29	36	24	42	35	35	-5	6	6	-1
N/Marianas	1	--	1	--	1	--	--	--	--	--
Alaska	10	8	9	11	11	9	-1	3	1	1
Arizona	23	33	27	37	31	31	4	4	8	-2
E/Arkansas	12	12	13	17	15	14	1	5	3	2
W/Arkansas	11	8	11	10	13	9	--	2	2	1
N/California	35	34	36	30	41	25	1	-4	6	-9
C/California	49	61	53	61	61	51	4	--	12	-10
Colorado	24	18	22	20	25	17	-2	2	1	-1
Connecticut	15	14	17	14	20	12	2	--	5	-2
Delaware	10	6	9	8	9	7	-1	2	-1	1
District of Columbia	35	205	39	166	40	148	4	-39	5	-57
N/Florida	7	11	9	14	10	12	2	3	3	1
M/Florida	17	35	21	34	25	28	4	-1	8	-7
N/Georgia	31	31	28	33	33	27	-3	2	2	-4
M/Georgia	10	11	11	12	13	10	1	1	3	-1
S/Georgia	7	14	8	18	9	15	1	4	2	1
Hawaii	9	9	9	12	12	10	--	3	3	1
Idaho	10	8	10	10	10	8	--	2	--	--
N/Illinois	41	47	44	34	54	28	3	-13	13	-19
S/Illinois	8	11	6	14	8	12	-2	3	--	1
C/Illinois	7	10	12	10	13	9	5	--	6	-1
N/Indiana	10	14	10	14	14	12	--	--	4	-2
S/Indiana	14	18	16	16	17	14	2	-2	3	-4
N/Iowa	10	6	9	8	9	6	-1	2	-1	--
S/Iowa	9	9	9	11	11	9	--	2	2	--
Kansas	20	22	20	21	21	18	--	-1	1	-4
E/Kentucky	10	18	12	20	15	17	2	2	5	-1

United States Marshals Service
Comparison of Number of Judicial Officers to USMS Employees

District	Status when Judge-Ship Bill Enacted 10/78		Status as of 3/16/81		Estimated Status as of 9/30/82		Change 10/78-3/81		Change 10/78-9/82	
	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.
W/Kentucky	13	16	14	15	14	12	1	-1	1	-4
E/Louisiana	19	38	22	35	26	31	3	-3	7	-7
W/Louisiana	15	19	15	19	16	17	--	--	1	-2
Maine	7	7	7	8	9	7	--	1	2	--
Maryland	19	39	21	38	24	32	2	-1	5	-7
Massachusetts	24	31	27	35	32	29	3	4	8	-2
E/Michigan	26	38	27	36	32	30	1	-2	6	-8
W/Michigan	10	9	13	11	15	10	3	2	5	1
Minnesota	18	21	18	22	21	18	--	1	3	-3
N/Mississippi	6	9	8	12	10	11	2	3	4	2
S/Mississippi	7	12	7	14	9	11	--	2	2	-1
E/Missouri	16	19	18	22	20	18	2	3	4	-1
W/Missouri	13	25	14	24	16	20	1	-1	3	-5
Montana	18	11	18	13	18	12	--	2	--	1
Nebraska	13	11	12	12	12	10	-1	1	-1	-1
Nevada	10	14	11	14	12	12	1	--	2	-2
New Hampshire	5	6	5	6	6	5	--	--	1	-1
New Jersey	26	35	27	29	33	25	1	-6	7	-10
New Mexico	16	13	16	15	17	13	--	2	1	--
N/New York	14	9	12	13	14	11	-2	4	--	2
E/New York	22	40	22	36	27	30	--	-4	5	-10
S/New York	57	60	60	59	63	49	3	-1	6	-11
W/New York	12	13	10	17	12	15	-2	4	--	2
E/North Carolina	8	12	8	17	12	14	--	5	4	2
M/North Carolina	7	12	7	11	9	9	--	-1	2	-3
W/North Carolina	7	10	6	14	8	11	-1	4	1	1
North Dakota	12	10	13	13	13	11	1	3	1	1
N/Ohio	25	32	27	30	33	25	2	-2	8	-7
S/Ohio	22	18	25	19	26	16	3	1	4	-2

United States Marshals Service
Comparison of Number of Judicial Officers to USMS Employees

District	Status when Judge-Ship Bill Enacted 10/78		Status as of 3/16/81		Estimated Status as of 9/30/82		Change 10/78-3/81		Change 10/78-9/82	
	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.
N/Oklahoma	8	8	9	10	10	9	1	2	2	1
E/Oklahoma	8	6	9	10	9	9	1	4	1	3
W/Oklahoma	13	15	14	18	16	14	1	3	3	-1
Oregon	19	15	21	17	24	14	2	2	5	-1
E/Pennsylvania	33	32	34	36	36	31	1	4	3	-1
M/Pennsylvania	11	14	12	14	14	12	1	--	3	-2
W/Pennsylvania	23	20	22	20	23	18	-1	--	--	-2
Puerto Rico	9	13	10	18	17	15	1	5	8	2
Rhode Island	7	8	7	10	8	8	--	2	1	--
South Carolina	13	25	18	25	22	22	5	--	9	-3
South Dakota	10	16	9	15	11	13	-1	-1	1	-3
E/Tennessee	10	12	9	15	9	12	-1	3	-1	--
M/Tennessee	8	11	9	14	10	12	1	3	2	1
W/Tennessee	10	12	8	14	11	12	-2	2	1	--
N/Texas	21	29	26	29	29	24	5	--	8	-5
E/Texas	8	13	8	14	11	12	--	1	3	-1
S/Texas	22	41	25	42	30	35	3	1	8	-6
W/Texas	23	41	25	48	28	39	2	7	5	-2
Utah	7	9	12	12	13	10	5	3	6	1
Vermont	9	6	8	8	8	7	-1	2	-1	1
E/Virginia	19	41	22	46	28	40	3	5	9	-1
W/Virginia	15	9	14	11	18	9	-1	2	3	--
E/Washington	5	8	5	8	6	7	--	--	1	-1
W/Washington	19	19	21	22	26	19	2	3	7	--
N/West Virginia	8	7	9	7	9	6	1	--	1	-1
S/West Virginia	11	15	14	16	16	13	3	1	5	-2
E/Wisconsin	12	14	12	14	13	11	--	--	1	-3
W/Wisconsin	9	7	9	7	11	6	--	--	2	-1
Wyoming	15	8	15	9	16	7	--	1	1	-1

United States Marshals Service
Comparison of Number of Judicial Officers to USMS Employees

District	Status when Judge-Ship Bill Enacted 10/78		Status as of 3/16/81		Estimated Status as of 9/30/82		Change 10/78-3/81		Change 10/78-9/82	
	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.	Number of Jud. Officers	Number of USMS Emp.
Canal Zone	1	3	1	2	--	--	--	-1	-1	-3
Guam	1	3	1	4	1	4	--	1	--	1
Virgin Islands	5	7	3	9	3	8	-2	2	-2	1
M/Louisiana	4	7	5	8	6	7	1	1	2	--
E/California	23	27	25	27	28	23	2	--	5	-4
S/California	14	44	15	40	18	32	1	-4	4	-12
Subtotal, Districts	1,410	1,906	1,491	1,972	1,718	1,668	81	66	308	-238
Headquarters	--	120	--	131	--	112	--	11	--	-8
Operational personnel 1/	--	102	--	131	--	125	--	29	--	23
Totals	1,410	2,128	1,491	2,234	1,718	1,905	81	106	308	-223

1/ Not assigned to district offices

Absorption of Workload

Do you think the additional marshals are commensurate with the additional workload imposed by the increased number of judges?

The Marshals Service was authorized 117 deputy positions in FY 1980 to complement the increased number of judges approved by the Omnibus Judgeship Act of 1978. The deputy positions in addition to the contract/GSA/USPS guard services provided an adequate resource base for normal operations at this time.

Currently the Judiciary has increased to the following with no increase in deputy position:

— 170 Circuit Judges
— 632 District Judges
— 236 Bankruptcy Judges
— 453 Magistrates

Fugitive Responsibilities

What has been the impact of the marshals assuming the fugitive responsibilities from the Federal Bureau of Investigation?

Since the transfer of responsibility for the arrest of federal fugitives from the FBI to the Marshals Service on October 1, 1979, the Marshals Service has achieved a high overall arrest rate of 53 percent. In cases involving escaped federal prisoners reported by the Federal Prison System the Marshals Service has achieved an arrest rate of 76 percent (compared to the FBI's FY 1978 arrest rate of 46 percent) while reducing the backlog of such cases by 16 percent.

The Marshals Service is continually upgrading its technical expertise and the quality of its performance through the institution of intensive training programs and the use of automatic data processing equipment. In addition to the Service's representatives at the El Paso Intelligence Center (EPIC) and INTERPOL, constructive liaisons are maintained with the Department of State and federal, state and local law enforcement agencies.

By formal agreement with INTERPOL, the Marshals Service is responsible for the location and apprehension of foreign fugitives located in the United States and for the extradition of American fugitives apprehended in foreign countries.

The transfer of this responsibility has also been beneficial to the FBI by allowing that agency to place more emphasis on its other investigative responsibilities.

How many additional personnel were allowed the Marshals to carry out the fugitive responsibilities?

On October 1, 1979, in an effort to reduce duplication of effort and enable the FBI to conduct other investigations, the Attorney General assigned the primary responsibility for fugitive investigations and

apprehensions to the Marshals Service. No additional positions were allocated to the Marshals Service at the time the responsibility was added, however, 23 additional positions were included in the FY 1981 budget.

Jail Improvement Program

The Administration has withdrawn the request of $3,000,000 to improve conditions in local jails that hold federal prisoners.

What is your overall assessment of the condition of the local jails?

The average contract jail where federal prisoners are housed is usually extremely overcrowded and unable to meet even minimal life safety and health care standards. These facilities are understaffed and must often utilize untrained detention personnel. As a result, inmate civil rights or personal liability actions against the jail administrator, local authorities, and the Department of Justice, have become increasingly common. At present, sixty-six (66) of the Service's 800 contract facilities are under court order with regard to conditions of confinement. This represents a 100 percent increase over the FY 1979 level. More than two dozen states are under court order to improve living conditions in their penitentaries and another dozen face similar court challenges.

When would the $3,000,000 have been spent?

The Marshals Service had planned to obligate all of the $3 million requested in FY 1982 to upgrade high usage detention facilities under federal court order.

Use of Aircraft

How did the Marshals Service acquire a capability in the tactical deployment of aircraft?

Several members of the Special Operations Group are expert aviators in their own right through experience gained during military and National Guard Service. This experience includes Federal Aviation Administration (FAA) commercial ratings as well as FAA and military instructor ratings, tactical rotary wing instructor ratings and tactical deployment of aircraft.

Local Jails Housing Federal Prisoners

How many jails have refused to take federal prisoners?

The following listing identifies 55 jails where U.S. Marshals Service contracts for the housing of federal prisoners have been terminated unilaterally by local authorities as of March 31, 1981. Also included in the listing are 27 facilities where USMS utilization has been restricted due to overcrowding; 2 facilities where utilization may be terminated or restricted; and another 12 jails the Service itself decided to stop using due to substandard jail conditions.

Only 21 of the 55 jails where federal use has been terminated are under court order. Contracts with the other 34 jails were terminated unilaterally by local authorities out of fear of being placed under court order, intervention by the Civil Rights Division, or being subject to personal liability suits if they continued to house federal prisoners.

DISTRICT NAME	JAIL NAME	IS OR WAS MAJOR USE FACILITY?	UNDER COURT ORDER?	COMMENT
N/AL	Jefferson Co.	yes	yes	Use terminated by local authorities
	Tuscaloosa Co.	no	yes	Use restricted due to overcrowding
M/AL	Montgomery Co.	yes	yes	Use restricted due to overcrowding
S/FL	Broward Co.	no	yes	Use terminated by local authorities
	Dade Co.	yes	yes	Use restricted to overnight arrests only
	Lauderhill City	yes	no	Use terminated by local authorities
	Palm Beach Co.	no	yes	" " " "
AZ	Bisbee City	no	no	Out due to USMS decision based on poor jail conditions
	Chandler City	yes	no	Use terminated by local authorities
	Glendale City	no	no	Out due to USMS decision based on poor jail conditions
	Maricopa Co. Juvenile Court Ctr.	no	no	Use terminated by local authorities
	Pima Co.	yes	yes	Use terminated by local authorities
	South Tucson City	no	no	Out due to USMS decision based on poor jail conditions
	Wilcox City	no	no	" " " "
	Yuma County	yes	no	Use restricted by USMS because of conditions
W/AR	Crawford Co.	no	no	USMS decision to get out due on poor jail conditions
C/CA	Los Angeles Co.	yes	yes	Use terminated by local authorities
	Long Beach City	no	no	Out due to USMS decision based on poor jail conditions
CO	Larimer Co.	no	yes	Use terminated by local authorities
DE	Pre-trial Center	no	yes	Use terminated by local authorities
	DE Correc. Ctr.	yes	yes	" " " "
	Women's Correc. Institution	yes	yes	" " " "
	Sussex Co. Correc. Institution	no	yes	" " " "
N/FL	Jackson Co.	no	no	Use terminated by local authorities
M/FL	Orange Co.	yes	no	Use restricted due to overcrowding
	Duval Co.	yes	yes	Use severely restricted to overnight arrests only -almost all Federal prisoners are excluded and must be housed as much as 50 miles from the Federal Court
N/GA	Cobb Co.	yes	no	Use terminated by local authorities
	Gwinnet Co.	no	no	" " " "
	Fulton Co.	yes	no	Use severely restricted due to overcrowding
S/GA	Chatham Co.	yes	no	Use terminated by local authorities except for female prisoners
ID	Kootenai Co.	no	yes	Use terminated by local authorities
	Nez Pierce Co.	no	no	" " " "
S/IND	Clay Co.	no	no	USMS decided to get out due to poor jail conditions
	Putnam Co.	no	no	" " "
KAN	Johnson Co.	no	no	Use terminated by local authorities
	Leavenworth Co.	yes	no	Use terminated by local authorities May renegotiate again
	Russell Co.	no	no	Use terminated by local authorities
E/KY	Boyd Co.	no	no	Use terminated by local authorities
	Pike Co.	no	yes	" " " "
W/KY	Hardin Co.	yes	no	USMS decided to get out due to poor jail conditions
	Louisville Diagnosis & Detention Center	no	no	" " " "
	Meade Co.	yes	no	" " " "
	Warren Co.	no	no	" " " "
W/LA	St. Landry Parrish	no	yes	Use terminated by local authorities
MD	Baltimore City	yes	yes	Utilization restricted--at one point all USMS prisoners were ordered removed
MA	Bristol Co.	yes	no	Use terminated by local authorities
	Suffolk Co.	yes	yes	" " " "

DISTRICT NAME	JAIL NAME	IS OR WAS MAJOR USF FACILITY?	UNDER COURT ORDER?	COMMENT
NV[1]/	Boulder City	no	no	Use terminated by local authorities
	Elko Co.	no	no	" " " "
	Henderson Co.	no	no	Use restricted due to overcrowding
	Las Vegas Metro	yes	yes	Use terminated by local authorities
	North Las Vegas City	yes	no	Use severely restricted to no more than 5 days per prisoner
	Washoe County	yes	no	Use terminated by local authorities
N/NY	Albany Co.	yes	yes	Use terminated by local authorities
	Onondaga Co.	no	yes	Use restricted due to overcrowding
	Schenectady Co	no	no	Use terminated by local authorities
E/NY	Nassau Co.	no	yes	Use restricted due to overcrowding
N/OH	Medina Co.	no	no	Use terminated by local authorities
	Summit Co.	yes	yes	" " " "
S/OH	Butler Co.	yes	no	Use terminated by local authorities
	Hamilton Co.	yes	yes	" " " "
	Scioto Co.	no	no	" " " "
OR	Columbia Co.	yes	no	" " " "
	Douglas Co.	no	no	" " " "
	Marion Co.	yes	no	" " " "
	Multnoma Co.	yes	yes	Use severely restricted due to overcrowding
E/PA	Philadelphia City	yes	yes	Use severely restricted due to overcrowding
M/PA	Monroe Co.	no	no	Use terminated by local authorities
PUERTO RICO	Bayamon Metro	yes	yes	Use terminated by local authorities
	Vega Alta Industrial School for Women	yes	yes	Use restricted due to overcrowding
E/TN	Coffee Co.	no	no	Use restricted due to overcrowding
N/TX	Howard Co.	no	no	Use terminated by local authorities
S/TX	Victoria Co.	no	no	Use terminated by local authorities
	Webb Co.	yes	no	Use restricted due to overcrowding
W/TX	Bastrop Co.	yes	no	Use terminated by local authorities
	Bexar Co.	yes	no	Possible loss of all jail space
	Maverick Co.	yes	no	Use restricted due to overcrowding
E/VA	Alexandria City	yes	yes	Use severely restricted due to overcrowding
	Fairfax Co.	yes	no	" " " "
	Norfolk City	yes	no	Use terminated by local authorities
E/WA	Franklin Co.	no	no	Use restricted due to overcrowding
	Grant Co.	no	no	USMS decided to restrict use due to jail conditions
	Kittitas Co.	no	no	Use severely restricted due to overcrowding
	Walla Walla Co.	no	no	Use terminated by local authorities
W/WA	Grays Harbor Co.	no	no	Use terminated by local authorities (will house overnight when space available)
	King Co.	yes	yes	Use terminated by local authorities
	Lewis Co.	no	no	" " " "
	Pierce Co.	yes	no	Use severely restricted due to overcrowding
	Snohomish Co.	yes	no	Use terminated by local authorities
S/WVA	Cabell Co.	yes	yes	Use terminated by local authorities
WY	Cheyenne Co.	no	no	Use terminated by local authorities
E/CA	El Dorado Co.	no	no	Use restricted due to overcrowding
	Sacramento Co.	yes	no	Under litigation use will probably be restricted
	Stanislaus Co.	no	no	Use terminated by local authorities

1/NOTE: Due to critical space shortages within the district of Nevada, all prisoners are being transported to San Bernadino, and San Diego, California for housing.

DISTRICT NAME	JAIL NAME	IS OR WAS MAJOR USE FACILITY?	UNDER COURT ORDER?	COMMENT
S/CA	San Diego Co. Juv. Hall	yes	no	Use severely restricted due to overcrowding
	San Diego Co. Jail	no	yes	" " " "

SUMMARY DATA:

55 Jails USMS ordered out of by local authorities
27 Jails where USMS use is restricted
2 Jails where USMS will be out of/or use reduced
12 Jails USMS decided to stop using due to poor jail conditions

96 TOTAL JAILS CLOSED OR RESTRICTED TO USMS USE

47 OF THE 96 JAILS ARE MAJOR USE

SUBCOMMITTEE RECESS

Senator WEICKER. The subcommittee will stand in recess until 9:30 tomorrow.

[Whereupon, at 11:30 a.m., Wednesday, March 18, the subcommittee was recessed to reconvene at 9:30 a.m., Thursday, March 19.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

THURSDAY, MARCH 19, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room S-146, the Capitol, Hon. Lowell P. Weicker, Jr. (chairman) presiding.

Present: Senators Weicker and DeConcini.

DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

STATEMENT OF ANDREW CARMICHAEL, ACTING ASSOCIATE COMMISSIONER FOR EXAMINATIONS, ON BEHALF OF DAVID CROSLAND, ACTING COMMISSIONER

ACCOMPANIED BY:
JAMES A. KENNEDY, ACTING COMPTROLLER
THOMAS N. PERRELLI, DIRECTOR, PROGRAM PLANNING AND BUDGET STAFF
KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION
CHARLES R. NEILL, CONTROLLER
WADE B. HOUK, DIRECTOR, BUDGET STAFF

BUDGET REQUEST

Senator WEICKER. Our first request is that of the Immigration and Naturalization Service. The amount requested is $363,376,000, a decrease of $15,674,000 in the 1982 base. Decreases are requested for the inspection and Border Patrol sections, adjudication programs, training, and several of the programs.

The request also includes several increases.

Appearing on behalf of the Immigration and Naturalization Service is David Crosland, the Acting Commissioner, accompanied by James A. Kennedy, the Acting Comptroller, Thomas N. Perrelli, Director, Program Planning and Budget Staff, Kevin D. Rooney, Assistant Attorney General for Administration, Charles R. Neill, Controller, and Wade B. Houk, Director, Budget Staff.

Mr. Crosland, I have been informed, has that worst of all diseases as far as politicans are concerned, if not bureaucrats, laryngitis. I don't

know which is worse. I was informed yesterday that on my shaking hand, the bone on my finger is bruised and I can't shake hands.

Between my hand and your voice, I would say we are not well suited for the business, that at least, I am in.

Anyway, we will be delighted to hear your statement and have your interpreter deliver it.

Mr. CARMICHAEL. Good morning, Mr. Chairman. I am pleased to speak on behalf of Mr. Crosland. I will do my best to speak for him.

On my right is Mr. Kevin Rooney, Assistant Attorney General for Administration; on his right is Mr. Charles Neill, Controller, Department of Justice; and on his right is Mr. Wade Houk, Director of the Budget Staff.

On Mr. Crosland's left is Mr. James Kennedy, our Acting Comptroller, and Mr. Thomas Perrelli, Director, Program Planning and Budget Staff.

We also have members present from the Service management team to assist in answering questions.

PREPARED STATEMENT

Mr. Crosland has prepared a statement, of course, and has given you a copy. We ask that it be introduced in the record.

Senator WEICKER. It will be accepted in its entirety.

[The statement follows:]

STATEMENT OF DAVID CROSLAND

I am pleased to have the opportunity to appear before you in support of the 1982 budget request for $363,376,000 and 9,531 positions. I am accompanied by members of the INS management group.

This month marks the 90th anniversary of the founding of the Immigration and Naturalization Service. During the last year the attention of the public has been focused upon immigration issues.

Last year INS processed 125,000 Cubans who came without documents seeking asylum; more than 60,000 Iranian students were interviewed and a determination made on their immigration status; over 13,000 Haitians, also seeking asylum, were processed by INS amidst legal entanglements which until December prevented the holding of exclusion or deportation hearings; and 214,000 Southeast Asian refugees entered the country.

The heavy flow of immigrants and refugees, which has continued since the fall of Vietnam in 1975, has substantially increased applications and petitions to INS for the reuniting of families, adjustment to permanent immigrant status and for United States citizenship. Although we are moving forward with our plan for automation, it will still be five to seven years before a total system is in place.

Since passage of the Immigration and Nationality Act of 1952, numerous amendments have been made which have added new benefits to aliens, or have extended existing ones to additional people. The effect has been an ever increasing workload for the Service.

The first significant one in 1965 changed the manner in which immigrant visas were allocated. This amendment abolished the quotas which were based on national origin and eliminated restrictions on immigration from the so-called Asia-Pacific triangle. The effect of this amendment was to extend immigrant visa eligibility to a larger number of aliens.

The next significant amendment in 1966 provided for the adjustment to permanent

resident status for Cubans admitted or paroled into the United States after January 1, 1959. This applied to the large number of Cubans who fled to the United States following the Castro revolution, and created a large INS workload.

A 1976 amendment made Western hemisphere aliens eligible for adjustment to permanent resident status while within the United States. This caused an increase in the processing of preference visa petitions and in the adjustment of status workload.

In 1977, legislation provided for the adjustment to permanent resident status of Indochina refugees paroled into the United States prior to January 1, 1979. An excess of 150,000 aliens benefited from this legislation.

The last significant amendment was the Refugee Act of 1980 which provided for the admission of refugees and the granting of asylum to aliens within the United States or at ports of entry. This act also provides for the adjustment to permanent resident status of refugees admitted and aliens granted asylum.

There are three main thrusts to the Service's efforts to provide automated support to its operational activities: 1) development of a Servicewide long range ADP plan; 2) an interim system which will provide automated casework support in the areas of naturalization and detention and deportation; and 3) maintenance and operation of the systems now in operation.

Development of the long range ADP plan is a continuance of a major planning effort begun last spring which has resulted in the completion of a mission plan (including mission goals and strategies to achieve those goals), an information requirements study, and a systems design concept.

INS is formulating a proposed ADP capabilities plan. This will incorporate documentation of the Service's current ADP systems and result in a description of automated applications required to support its mission goals.

Congress had placed a hold on all INS procurement of data processing equipment pending the completion of a long range plan. However, it has been recognized

that some level of automated support is necessary in the meantime. In answer to this need the President's Management Improvement Council has recommended that INS develop an interim automated capability to support casework control in naturalization and deportation docket control. INS has begun to develop this interim support and has received approval by the Brooks Committee last week to go forward.

We are also continuing to operate and maintain current systems. Major ones include the financial management information system (FMIS), the master index, the nonimmigrant document control system (NIDC), and the alien documentation identification and telecommunications system (ADIT). Major initiatives include expansion of access to the master index through placement of terminals in INS field offices and a nonimmigrant information requirements study being performed under contract to provide INS with the basis for improvements to its NIDC system.

It is in the spirit of concern over federal spending and the desire to reduce outlays as a means of combatting inflation that the INS 1982 budget has been submitted.

The President has appointed Attorney General Smith to direct an Interagency Task Force on Immigration Policy. This task force will report to the President in May. The task force will study a number of areas including, but not limited to, those identified in the report by the Select Commission. The Attorney General has previously stated to the House Judiciary Committee that upon completion of this study he may recommend changes in the proposed budget for the Immigration and Naturalization Service.

The 1982 request for the Service is $363,376,000. The budget includes program increases of $5 million for automated data systems, operation of a temporary processing facility in Miami for Haitian boat people and repair and alteration of several facilities.

For the first time, INS has made its field operations managers a part of the budget process. Program managers worked closely with personnel in the regional

offices in determining needs and areas of highest priority as a means of arriving at more realistic funding levels. This also has the obvious benefit of making field personnel partners in the budget plan.

I will now address the operating divisions of the INS, beginning with the enforcement functions. Each of the functions will be covered in greater detail by the program managers over the course of these hearings.

The border patrol is the enforcement arm most responsible for apprehension of illegal aliens. In fiscal year 1980 apprehensions by the border patrol declined to just over 759,000 from 889,000 the preceding year. This decline was caused by two factors, which were unforeseen at the start of the year. One was the influx of Cubans in the boatlift, which required the assignment of 220 officers to refugee camps and to Florida to help maintain order in the camps and to ensure against the surreptitious landing of Cubans along the Florida coast. There are still 35 border patrol officers assigned to this project, including 25 at St. Elizabeth's Hospital here in Washington.

The second factor was the restriction placed upon checks of places of employment and residences during the 1980 census. To guard against allegations that INS was interfering with the census or using information gained from census takers to make apprehensions, the Attorney General required search warrants for officers to check businesses, farms, ranches and residences. These restrictions were in place from April 1980 until mid-January of this year.

Prior to the Cuban influx and the restrictions, apprehensions early in fiscal 1980 had been five per cent above the previous year. We anticipate that apprehensions during this fiscal year will increase to more than one million.

The 1982 budget calls for 2,716 positions in the border patrol. The practical effect is that the border patrol will remain at the same level in 1982 as in 1981.

The prevention of unlawful entry and the immediate apprehension of illegal entrants will be the primary border activity. We will continue, also, to

control penetration to the interior by traffic checks on major routes of travel and surveillance of public transportation in the border areas.

The investigations division is the second major arm of the law enforcement function. Investigators have two major responsibilities. One is the apprehension of illegal aliens in the interior of the United States. Second is investigative case work including fraud, such as that involving counterfeit documents and marriages entered into solely as a means for aliens to enter or remain in this country.

Last year apprehensions of illegal aliens by investigators engaged in search activities declined to 105,000 from 147,000 the year before. This decline was also attributable to the Cuban inflow and the search warrant requirement. In addition, investigators were heavily involved in the interviewing and search for out of status Iranian students, which was directed by the President.

It is worth noting that 66,000 of the illegal aliens arrested by investigators last year were employed, and about 70 per cent were earning the minimum wage or more.

An important part of INS law enforcement is directed against the smuggling of aliens into the United States. Last year more than 16,000 smugglers were arrested, and the number of smuggled aliens apprehended was 160,000. In addition, we used extensively for the first time a law permitting the seizure of smugglers' vehicles and confiscated 2,569 conveyances, including cars, trucks, campers, trailers, boats, and airplanes.

A major problem in the detention and deportation divisions is the housing of Haitians fleeing the proverty of their country and landing on the beaches in Florida. More than 13,600 Haitians have come illegally to the United States in the past year, and we anticipate continued arrivals of around 1,100 per month. A suitable facility to house up to 750 aliens in the Miami area is required. To achieve this a $6 million renovation is underway at a surplus missile site known as the Krome facility. This is expected to be completed and in full operation late this fiscal year. The Army Corps of Engineers is

paying for this renovation. The 1982 budget requests $2.2 million to operate the facility.

INS has recently begun holding exclusion hearings on Haitians in the Miami area who arrived after October 10, 1980. Until recently, the Service was under a court order not to conduct such hearings, and none had been held since 1976. Hearings will be held first on the oldest cases ... those who have been here the longest. Haitians who arrived prior to October 10 are covered under the special Cuban/Haitian entrant status.

The inspections division has the major responsibility for preventing the entry of non-admissible aliens at ports of entry and facilitating admission of bona fide travelers. Last year 309 million ... nearly one and one half times the nation's population ... made entry into the United States. This includes United States citizens and border crossers, who pass back and forth from Mexico and Canada daily. Each must be inspected, and represents a unit of work. This figure is increasing each year. In 1979 it was 275 million; in 1982 it is expected to be 340 million.

To facilitate entry by the public, and as an economy measure, both Immigration and Customs screening has been shared in recent years by INS and the United States Customs Service at land border ports of entry. Customs inspectors are designated to perform immigration inspections ... that is to determine if the persons attempting entry to this country are legally entitled to do so. INS inspectors also perform Customs inspections . . . to prevent the entry of prohibited materials.

Several new methods have been implemented by INS at international airports to make the inspections process more efficient and reduce waiting time for the public. At 24 major airports we have instituted a citizen by-pass, which allows United States citizens to walk around the immigration inspection area. At others, combined immigration and customs inspections are conducted at the same time by a single officer, eliminating the need for the incoming passenger to make two stops. This is similar to the inspection procedure which has been in effect at land border ports.

In recent years we have established pre-clearance, which means inspection of United States bound passengers before they board a plane at a foreign departure point. This has been underway in Canada and the Bahamas and an interagency group is investigating possible expansion of the procedure to some European airports.

During non peak hours INS inspectors also adjudicate petitions, such as applications to bring foreign relatives to this country. Last year nearly half of all applications and petitions submitted to INS were processed by inspectors at ports of entry.

In addition to its law enforcement responsibilities, INS also provides service to the public. This includes the reunification of families whose members are in the United States and abroad, entry of immigrants with needed skills and temporary admission of students, some workers and others.

Much of this work is performed by the adjudications division of INS. Receipts of applications and petitions to this division have reached nearly two million annually in recent years, increasing by more than 30 per cent since 1977. In an attempt to handle the growing workload without increasing staff, INS has turned to methods, such as the combining of forms and on the spot adjudication of simpler requests, including extensions of stay in this country. As I mentioned earlier, nearly half of the applications are sent to ports of entry to be adjudicated by inspectors between flights or during non peak hours.

The volume of applications is expected to continue to increase, partly as a result of the growing number of refugees entering the country. There has been more than a six fold increase in refugee entries since 1977.

Another major service area is naturalization. Applications for American citizenship have been increasing at a rate of nearly 15 per cent per year, last year totaling over 316,000. At the end of last year pending applications totaled 113,000, or about five months of work at our present completion rate. Volume will continue to grow, also partly because of the large refugee inflow of recent years.

Naturalization is an area where legislation, would increase productivity. Current law requires all applicants for citizenship to bring for interview two persons to testify to the applicant's good moral character. Of course no one brings in witnesses who reveal anything derogatory about the applicant. And the information they provide is easily available from other sources, such as police and court records. We believe that legislation eliminating the two witness requirement would increase INS naturalization productivity by one-third.

One of the major sources of complaints from the public is that people cannot reach INS offices by telephone. Phones are either busy or unanswered. To improve responsiveness we have been installing new and automated telephone equipment. Seven upgraded systems were installed in field offices last year, bringing to 15 the number installed in the past two years. Tape libraries informing people about differing immigration policies and laws have been installed in Los Angeles and Miami, and are being evaluated.

Telephone responsiveness has been improved, but further improvements are needed. We anticipate that phone inquiries will continue to increase.

In summary, the management of INS has made considerable progress in identifying solutions to problems which have been known for some time. For example, after being named Acting Commissioner nearly 18 months ago I placed a hold on procurements over $10,000, and asked the Justice Department to review all such major contracts. The procedure now includes sufficient safeguards so that the Justice Department is satisfied with the new system, and I have released the hold.

The President's Management Improvement Council has been studying and working with INS for more than a year, and has also been helpful in spotlighting problems and recommending steps to resolve them. We asked them to look into some specific areas and make recommendations. The Council's report calls attention to a number of needed administrative improvements, some of which have been implemented. Others are targeted for corrective action in the near future. Among those changes which have been made are improved procurement procedures,

increased consultation with unions representing INS employees and greater involvement in the planning process by field personnel.

INS is continuing to make progress toward solving its major problems. However, we recognize that there are no quick fixes which will resolve problems in a matter of weeks or months. The entire management of the agency is aware of the need for continued productivity improvements and the development of greater operating efficiencies, and is committed to achieving them, utilizing as effectively as possible the resources available to us.

Thank you. I and my staff will be pleased to answer your questions.

OPENING STATEMENT

Mr. CARMICHAEL. I would like to make a few summary remarks if I may, Mr. Chairman. You are perfectly aware of the problems the Service has faced in the last year and a half, and of the very complex area of law that we attempt to administer, and the complexity compounded by more problems and crises.

Therefore, we are working with the Attorney General and briefing him to the greatest extent possible on some of the problems which are of a short-term basis. Some of the issues are serious ones which need to be resolved in the short term as well as long term.

This has been an extremely busy year or year and a half in the life of the Service. You will recall that about a year and a half ago we encountered the Iranian crisis, which took at times as many as 1,200 of our people to deal with the interviewing of people and other enforcement aspects that arose during the time of that crisis.

It resulted in some regulations which placed restrictions on Iranians in the United States. You will recall we were successful in defending that position before the courts.

Hardly had we resolved some of those issues in the spring than we were faced with the Cuban boat lift emergency, and in an extremely short time over 125,000 people came into our country in an uncontrolled way. Over the next several months we were required at times to have 800 of our officers-examinations, enforcement, and administrative people—assigned to that task full-time.

We, along with other agencies, had four major camps activated in the United States. This, of course, brings us to really a more serious issue facing our country, and that is that we have become a country of first asylum. We saw that in major proportions with the Cubans. We are also experiencing it with Haitians, Nicaraguans, and Salvadorans. Others are finding it possible today to come to our country and seek asylum here.

Traditionally we have dealt with the refugee program pretty much from a distance. We would go to other countries and would examine and screen people and admit them in accordance with the will of Con-

gress or special legislation or parole authority in humanitarian circumstances.

MANAGEMENT PROBLEMS

Throughout this year we have tried, in addition to meeting the operational crisis, to deal with management problems within the Service. Mr. Crosland started about a year and a half ago to make effective what we call a management team. He has called on all the chief officers at all times to be involved in each other's problems, so that no misunderstandings arise and each knows what the others are doing, and how their work fits in and crosses other's lines of authority.

We have also dealt with the mission of the Service. During the last year we have used the entire resources of the Service, from the lowest levels to the central office in developing a mission plan. We wanted to get down in writing clearly what the mission of the Service was, and within that mission the goals that we expect of ourselves in the short and the long term.

To achieve these goals, we have developed strategies which are based very heavily on efficiencies, particularly in those areas where we have to deal with heavy workloads and static resources.

PRESIDENT'S MANAGEMENT IMPROVEMENT COUNCIL

We have tried to deal with other issues, to become more effective in enforcement, and to do so in a humane way. Throughout this year we have had with us the President's Management Improvement Council, under the direction of Mr. John Kratske. He has worked very closely with us, and we have cooperated fully with him in examining some of the other management problems of the Service, particularly the financial and personnel management areas.

We are striving to come up with information systems and with plans for the automation of the Service. We simply have to find better ways of handling cases.

We also have to find better ways of maintaining our records system, although it will be some time in the future before we can develop this fully.

If you would like, Mr. Chairman, I will go into some of the program areas, both enforcement and examinations area, if you would like me to do that.

BUDGET REDUCTIONS

Senator WEICKER. Why don't we get to the questions and then maybe this will cover the very area you would like to discuss.

In a number of areas the budget proposes fewer positions than those appropriated in fiscal year 1981. Some of these decisions were made by the previous administration. For example, the border enforcement is 385 positions below authorized levels, interior enforcement 309 positions below authorized levels, service to the public 477 positions below authorized levels.

First, are we reducing rather than increasing our ability to stop the illegal alien flow?

Mr. CARMICHAEL. Well, Mr. Chairman, I think this gives us an opportunity—yes, I think it will affect us. It does give us an opportunity

within the plans we have been looking into to see if we can do things in a better way. There are electronic means, through efficiencies, through profiles and through more effective ways of doing things with the resources we have.

BORDER ENFORCEMENT

Senator WEICKER. Let's break some of these down. Let's start off with border enforcement. Speaking for myself, I don't believe that if you have 10,000 people on the border you are going to be able, in the absence of any other measure to prevent illegal immigration. But in any event, with this specific cut. How are you going to distribute the 385? You have additional electronic surveillance, aircraft surveillance, and a program in the interior to prevent people trying to come across the border.

You are going to cut 385 positions and I would like to know how you expect to achieve better management. What better technique is there to supplement what up to this point has been an effort to confront that problem by way of personnel at the border?

Mr. CARMICHAEL. It will require, to a great extent, electronic resources. We will also use task force methods and concentrate our resources at the most critical points.

Senator WEICKER. What special examination took place in order to have you effect this policy shift from personnel to electronics? If you did some specific study—what I am trying to say, is this truly a decision on substance or is it a decision brought about by mandating a reduced dollar level?

I think that is the key question I want specifically answered: Is this a substantive decision or a decision reached after the numbers were given to you in the sense of meeting dollar figures?

Mr. CARMICHAEL. Using the term 385 for enforcement, we are really talking about 160 border patrol positions.

Senator WEICKER. Excuse me just 1 minute.

[A brief recess was taken.]

Senator WEICKER. All right, I am sorry.

Mr. CARMICHAEL. Mr. Chairman, you referred to 385 in the border enforcement area. Two hundred of those are in the inspections program, which is part of our Examinations Division. One hundred and sixty of those are shown as border patrol positions, which, although authorized in the past, have never been filled because of funding problems.

However, if you will let me address the 200 for just a moment, we have in the inspection program now, just over 1,500 officers and support personnel at land, sea, and airports of entry. They are very heavily impacted by some of the efficiencies we have been working on.

However, I must tell you we are in an age of ever-increasing air travel. Last year, we had 309 million apply for permission to enter. We expect an increase to 340 million in 1982. We have inaugurated and are working on three efficiencies in that area. One is a citizen bypass system which enables us, in many major airports around the country, to allow U.S. citizens to simply bypass the immigration area, go directly to customs where they are inspected by one officer at one time for both immigration and customs purposes.

Another idea we are working on with other agencies is a one-stop system where our officers work with customs. We will be in a position to man one line instead of two sometimes, depending on configurations of the airports, and pass people through our lines more quickly using, again, one officer cross trained to do the work of both.

PRECLEARANCE SYSTEM

Finally, we are very deeply involved in developing what we call "preclearance," a system where we inspect persons abroad and concentrate resources at funnel points of distribution of flights to the United States. We feel it makes sense if we can inspect abroad those who might be coming into places in the country where we have few or no resources.

These are some of the things that are being worked on now, and have been worked on for some time. That is the inspections area.

Senator WEICKER. So far, I don't see anything in what you say that is going to justify a decrease in dollars or positions.

Mr. CARMICHAEL. But I think, Mr. Chairman, we do have to be cognizant of the fact we are trying to fight inflation.

Senator WEICKER. This is not the budget hearing. I am only interested in substance here. You have a job to do and you have problems to confront. All I can do is, in effect, translate the substance of your problems and your opportunities in dollars and cents. The Budget Committee can go ahead and take a look at this overall program. Indeed, if we looked at all of our problems just through the budget telescope, life would be rather simple insofar as the running of Government is concerned.

There are many other factors. I am the one that is charged with many of these. I expect an answer out of you that relates to the problems of immigration, and if I want an answer as to the budget and dollar totals, I will get that from somebody else.

I am saying nothing different to you than I said to other people who have appeared before this subcommittee. I am not being harsh on you. I am just saying I don't want to hear about the President's economic game plan. I am concerned with opportunities and/or problems the Immigration Service is having. You just tell me your story.

WORKLOAD INCREASES

Mr. CARMICHAEL. I would be less than candid if I told you there won't be an impact on the workload in our program. To tell you otherwise would be compromising. Our Service has been experiencing workload growth almost beyond belief in the last decade. We don't expect it to slow down.

Senator WEICKER. Well, I don't expect a slowdown either. I expect the turmoil going on in this hemisphere certainly isn't going to stop tomorrow and with the increase in international travel it goes up every single year with problems even compounding outside this hemisphere. Congress likes to get into all these matters, and tell you to go ahead and handle your end of things in an appropriate way. That is a great order, but without funding I don't see how you can do the job.

Mr. CARMICHAEL. I would say with the change of administration a task force has been appointed to review issues and recommendations

raised by the Select Commission. This task force has been given a 60-day period in which to report back on its findings, both as to policy issues and the budget.

INSPECTION DELAYS

Senator WEICKER. There is a 100-position reduction in the number of inspectors at ports of entry. We are already hearing about 1- and 2-hour waits. How do you intend to improve this situation?

Mr. CARMICHAEL. That is what I referred to just a few moments ago. Actually, there is a 100-position cut in fiscal 1981 and another 100 cut projected for fiscal 1982, and that is the program I spoke about just a moment ago. We are attempting in our strategy, however, with or without decreasing resources, to certainly concentrate our resources in high volume areas.

Senator WEICKER. Two questions, and then I am going to let Senator DeConcini, who has been very much involved in this whole operation, commence with his questions.

The request says a reduction in interior enforcement personnel of 717 in 1981 to 489 in 1982, coupled with other reductions, would indicate we are giving up serious attempts to locate deportable aliens. The justification says the Service will narrow its selection of cases and minimize increases in backlog.

The second question, I am going to join the two together, is in the area of enforcement. This budget runs contrary to the Select Commission's recommendations to close the back door. So that is the whole subject I want to raise now, the interior enforcement personnel, the fact that we do have a recommendation as to how to handle it. How does all this pull together in terms of this budget?

Mr. CARMICHAEL. Let me answer one part of that if I may, Senator, and then I will call on our Associate Commissioner for Enforcement. We have tried in the last year and a half to not refer as many cases to our investigations program as we have in the past from what we call the examinations area, including naturalization cases. It became apparent to some of us, it certainly became apparent to me in some of the programs I manage, that some of the officers in the field would refer an investigation to the Investigations Division when the issue might have been resolved by the officer himself at the time he encountered the applicant. We have succeeded in reducing by half the number of those cases we used to refer to investigations.

Now, as to its impact on a purely enforcement standpoint, as compared to support for examinations activities, I would like to ask Mr. Bertness, who is our Acting Associate Commissioner for Enforcement, and also Assistant Commissioner for Investigations, to address that.

Mr. BERTNESS. Mr. Chairman, the decreases would include a 403-man cut in investigations. It would not decrease the program presently in effect in locating illegal aliens in the United States. It would decrease case investigations. In order to offset that, to cushion the impact, we are reviewing our case management and are being more selective in the type of case we would spend resources and on-duty investigation on.

Part of the cuts in deportation and detention, which would actually go along with the other cuts taking place in the border as well as the interior enforcement, are tied together in that the activity of one branch affects the activity of the other branch.

That represents a decrease in the activity of investigations. It directly affects the detention program.

AMNESTY FOR CERTAIN ALIENS NOW IN COUNTRY

Senator WEICKER. The last question, before I turn this over to Senator DeConcini, does the Department agree with the recommendation to legalize the existing, undocumented alien population?

Mr. CARMICHAEL. That, of course, is a recommendation of the Select Commission, Mr. Chairman. We have done this in the past. On two occasions we have in essence "rolled back," one time in 1944, the other time in 1948. when we in effect, with documentation, legalized entry based on arrival before a certain date.

There is really nothing novel about it. It is one approach to the solution of that problem.

SELECT COMMISSION'S RECOMMENDATIONS

Senator WEICKER. Senator DeConcini?

Senator DECONCINI. Thank you, Mr. Chairman.

Mr. Carmichael, the Select Commission on Immigration and Refugee Policy in its recent report recommended a number of issues designed to restore some rational policy in the area of border enforcement. One element of the total package in the recommendation emphasizes vigorous and effective enforcement of existing laws.

The request before us today leaves me somewhat disturbed. For example, the border patrol has a reduction of 160 positions, the inspection program is cut by 100 positions, the investigation program is cut by 228 positions, and it goes on and on.

It would seem to me we ought to at least be at a minimum under the present administration's effort to reduce expenditures. Or at least not reduce in an area that has been neglected for a long time and that the Commission so clearly indicates that enforcement is lacking, not blaming the border patrol or INS specifically for it, because I realize often you support these decreases.

I wonder if you would comment or agree we should at least have it where it is instead of making these reductions?

Mr. CARMICHAEL. Senator DeConcini, I certainly do not want to be evasive but I do know the entire package of recommendations is now assigned to the interagency task force, of which the Attorney General of the United States is the chairman. As I mentioned a moment ago, the Select Commission's recommendation really deals a lot with other more crisis-related issues, requiring relatively short range solutions.

Senator DECONCINI. Let me ask you this. Do you agree with a recommendation that would emphasize vigorous and effective enforcement of existing laws?

Mr. CARMICHAEL. I strongly believe, Mr. Chairman, that the law contemplates enforcement.

Senator DECONCINI. Then would you also agree that to have effective and vigorous enforcement of the existing laws, that a reduction of the border patrol by 160 positions would not be in the best interests of providing that effective law enforcement?

Mr. CARMICHAEL. Certainly.

Senator DECONCINI. And you would have no problem putting those people to work assuming they were restored in that effort for effective law enforcement.

Mr. CARMICHAEL. None whatsoever.

REPLACEMENT OF VEHICLES AND EQUIPMENT

Senator DECONCINI. Thank you.

The other area that the committee has of interest is the replacement of vehicles and other equipment. We had some discussion with the committee last year. Congress authorized the replacement of 430 passenger vehicles. The subcommittee is now informed only 322 have been replaced. What accounts for the difference, particularly since INS will have 86 additional vehicles that meet replacement standards?

Mr. CARMICHAEL. With your permission, I would like to ask James Kennedy, our Acting Comptroller, who has information, to respond to that question.

Mr. KENNEDY. The vehicles purchased in the next couple of years are part of a long-range vehicle replacement plan. We have done an analysis of the entire fleet rather than buying a few cars at a time. The study was just completed and approved a day or so ago. I have some preliminary numbers here but I would like to give you the right numbers for the record. Part of the consideration must be that last year upon receipt of the final supplemental bill we made a large purchase of vehicles and that has now been worked into this long-range vehicle study. Last year we bought over 1,000 vehicles, both passenger carriers and trucks. This year we will buy 109 passenger carrying vehicles and 123 trucks with the money that is in the budget request.

Senator DECONCINI. Where does that show up?

Mr. KENNEDY. It does not show discretely in the budget, that is the problem. And in 1982 we are asking for $2.4 million and will buy 312 passenger carrying vehicles.

COMMITTEE REPORT REGARDING VEHICLES

Senator DECONCINI. Last year in the report of the Senate, I would just like to call to your attention to this statement and have your reaction to it. I am quoting from the report:

> The Committee is also concerned about the condition of the vehicle fleet. The latest report shows that in the month of July 12 percent of the vehicles were out of service and 44 percent of the vehicles had exceeded the 60,000 mile replacement standard. Also the practice of purchasing vehicles at the end of the fiscal year with unbudgeted funds represents haphazard management and violates the committee's established rules on reprograming. Therefore the committee expects the INS to establish within the base a permanent funding level for replacement vehicles. The present amount of funds available for replacement vehicles is not sufficient. The committee expects the fiscal year 1982 budget request to reflect a sufficient amount.

Can you comment on what the Service has done in respect to that committee position?

Mr. KENNEDY. I think there are three questions there. First of all the procurement cycle. We had to back up into the procurement system in the Service itself. We have now scheduled our procurements to take

place within the first three quarters of the fiscal year. We have to add, all other things being equal. Therefore if the plan continues on time this year we will buy our vehicles in the third quarter of this fiscal year, and I have to keep adding that caveat, assuming that the funds are still available. However there are rather difficult funding problems this year.

In the 1982 budget we have asked for $2.4 million, and that is for 312 vehicles. I think the important thing on that is that this is now part of a long-range plan, so that by 1983, we will be buying at the replacement level. In other words, when the vehicles reach the point when GSA tells us it is the time to buy them.

Senator DECONCINI. You have that plan?

Mr. KENNEDY. Yes. The Department of Justice has not approved that yet. The Commissioner sent it in the last couple weeks.

Senator DECONCINI. I would like to see at least a summary of the plan. You do not need to reproduce the whole thing if you can give us a summary.

Mr. KENNEDY. Sir, I will provide that for the record. Another important thing, because I did not answer your whole question, was that the plan for vehicle purchases was not done in the "Ivory Tower" as before. Now the Acting Commissioner has created a servicewide task force from the guys on the ground who are driving them and that task force came together and has worked up not only the number of vehicles to buy but the configuration of the vehicles and the gas savings and so on. So this is not only a long-range plan but also a reconfiguration of the entire fleet. I think that is the important part.

VEHICLE TYPES

Senator DECONCINI. Under the present circumstances of procurements, I suspect your plan would take care of this, but are you getting proper size automobiles? Are you getting an automobile that is swift enough and sturdy enough to go after a heavy duty car rather than a Pinto to chase a Cadillac or Lincoln?

Mr. KENNEDY. Yes, sir. That is part of the reconfiguration of the entire fleet. We went to each patrol sector and asked what do you need to do your job. It goes down to buying trail bikes and so on so they can get off the road. The study includes consideration of the kinds of changes you are referring to, such as what is needed in the cities and buying those Pintos. That is all part of the plan.

Senator DECONCINI. We look forward to reviewing that plan. We will help you if we can in the implementation of it.

[The information follows:]

INS MOTOR VEHICLE PROGRAM

The INS motor vehicle 5-year acquisition/reconfiguration plan contains the revised service acquisition policy, a complete validation of the current and on-order fleet, and an acquisition plan that reflects the updated policy of developing the fleet around the operational needs of specific geographic locations, shift staffing, and the use of the most fuel efficient vehicle to support the individual mission requirement.

The reconciled motor vehicle fleet inventory includes vehicles ordered in fiscal year 1980; the fiscal years 1981–85 requirements and acquisitions consider the impact of the fiscal year 1980 purchases. In the development of the 5-year plan, a new centralized file has been established in the central office by fleet number and location. This data replaces the former system of managing the motor vehicle fleet through reporting sys-

tems alone. These records have been established and carefully reconciled with the existing motor vehicle fleet as of January 1, 1980. The servicewide vehicle totals by fiscal year and totals for each region have been developed from this data base. The 5-year plan considers both requirements and funds for each fiscal year with a leveling of requirements to prevent large replacements from occurring in any one fiscal year, until a normal replacement rate is achieved.

The 5-year acquisition/reconfiguration plan, together with supporting data, represent a comprehensive vehicle management plan for managing the Service's fleet.

5-YEAR RECONFIGURATION/REQUIREMENT SUMMARY

TYPE VEHICLE	FY-81 NO.	FY-81 COST	FY-82 NO.	FY-82 COST	FY-83 NO.	FY-83 COST	FY-84 NO.	FY-84 COST	FY-85 NO.	FY-85 COST
Sedans	727	$4,870,000	250	$1,825,000	216	$1,749,600	467	$4,109,600	685	$7,329,500
Trucks	387	$5,108,400	143	$2,059,200	118	$1,840,800	338	$5,678,400	464	$8,352,000
Buses										
Interurban			5	$ 690,000	5	$ 750,000	5	$ 825,000	5	$ 910,000
School Type			3	$ 135,000	3	$ 156,000	3	$ 171,000	3	$ 189,000
TOTAL VEHICLES	1114		401		342		813		1157	
Funds Required		$9,979,300		$4,709,200		$4,496,400		$10,784,000		$16,780,500
Funds Available		*$2,358,600		$2,360,000		$2,360,000 (est)		2,360,000 (est)		2,360,000 (est)
Shortfall		$7,620,700		$2,349,200		$2,136,400		$ 8,424,000		$14,420,500

*With funds in FY-81 planned acquisitions are:

100 B/P Sedans @	$ 670,000
9 A/S Sedans @	$ 60,300
123 B/P Trucks @	$1,623,600
	$2,353,900

5-YEAR STRUCTURED ACQUISITION PLAN

TYPE VEHICLE	FY-81 NEED	FY-81 BUY	FY-82 NEED	FY-82 BUY	FY-83 NEED	FY-83 BUY	FY-84 NEED	FY-84 BUY	FY-85 NEED	FY-85 BUY
Sedans	727	109	868	430	216	559	467	559	685	559
Trucks	387	123	407	331	118	331	338	331	464	331
Buses										
Interurban			5	5	5	5	5	5	5	5
School Type			3	3	3	3	3	3	3	3
Total	1114	232	1283	769	342	898	813	898	1157	898
Cost		$2,353,900		$ 9,090,100		$10,596,500		$11,476,000		$13,038,300

This plan is based on averaging the total requirements for replacement vehicles after FY-81 over a four year period and eliminating overly large acquisitions to reach an annual average replacement schedule. The first two fiscal year budget base amounts are known. Projections to achieve stratifying the base presume budgets adjustments to meet these requirements. The latter four years projected and the shortfall from the first year acquisitions are averaged to achieve the transition to a normal base replacement schedule.

	AUTHORIZED FLEET				RECONFIGURED FLEET			
	SEDANS	TRUCKS	BUSES	TOTAL	SEDANS	TRUCKS	BUSES	TOTAL
EASTERN	356	88		444	334	69		403
WESTERN	500	447	47	994	530	559	47	1136
SOUTHERN	597	632	38	1267	544	505	38	1087
NORTHERN	280	86	1	367	295	69	1	365
CENTRAL OFFICE	15	16		31	17	14		31
	1748	1269	86	3103	1720	1216	86	3022

The above charts depict the present INS authorized motor vehicle fleet and the projected reconfigured fleet. The authorized fleet was completed through an inventory and represents on hand and on order vehicles as of January 1, 1981. The reconfigured fleet represents recomposition through location analysis relating actual requirements for the proper types and quantities of vehicles to perform INS missions. The location composition analysis was completed by the INS Motor Vehicle Policy Advisory Committee.

RECONFIGURED FLEET

TYPE VEHICLE	EASTERN REGION	WESTERN REGION	SOUTHERN REGION	NORTHERN REGION	CENTRAL OFFICE	TOTAL
Sedan Large	70	74	71	41		256
Sedan, Medium	27	189	319	28		563
Sedan, Compact	150	171	154	175	7	657
Sedan, Subcompact	87	96		51	10	244
Subtotal	334	530	544	295	17	1720
Bus, Interurban		37	22			59
Bus, School Type		10	16	1		27
Subtotal		47	38	1		86
Truck, Sedan Del.	2		18	2	10	32
Truck, 4x4	15	266	204	22		507
Truck, Pickup, 4x4	6	13	26			45
Truck, Pickup, 4x2	1	17	23	1		42
Truck, Carryall, 4x2	2	5	29	1		37
Truck, Large		7	10	1		18
Van, 4x4		3				3
Van, 4x2	43	248	190	42	4	527
Paddy Wagon			5			5
Subtotal	69	559	505	69	14	1216
TOTAL	403	1136	1087	365	31	3022

MOTOR VEHICLE COST/PRICE ESTIMATES

TYPE VEHICLE	AVERAGE ESTIMATED COST FY-81	FY-82	FY-83	FY-84	FY-85
Sedan, Large	7,400	8,100	9,000	9,800	10,800
Sedan, Medium	6,800	7,500	8,200	9,000	10,000
Sedan, Compact	6,500	7,100	7,900	8,600	9,500
Sedan, Subcompact	5,500	6,050	6,650	7,300	8,050
Sedan Median Cost	6,700	7,300	8,100	8,800	10,700
Bus, Interurban	127,000	138,000	150,000	165,000	182,000
Bus, School Type	44,000	45,000	52,000	57,000	63,000
Truck, Sedan Delivery	5,500	6,000	6,700	7,320	8,000
Truck, 4x4	8,900	8,900	8,900	8,900	8,900
Truck, Pickup, 4x4	7,600	8,300	9,200	10,000	11,000
Truck, Pickup, 4x2	6,500	7,100	7,800	8,600	9,500
Truck, Carryall, 4x2	9,900	10,100	11,200	13,100	14,500
Van, 4x4	15,000	15,000	15,000	15,000	15,000
Van, 4x2	12,000	12,000	12,000	12,000	12,000
Truck Median Cost	13,200	14,400	15,600	16,800	18,000

ACQUISITION POLICY

General Policy - INS will only acquire vehicles for performance of its mission with emphasis on operational efficiency and energy conservation.

Specific Policy - The following policies shall govern the determination, based on minimum operational needs for mission performance of the type and size of motor vehicles required by INS;

- Police pursuit sedans - Full sized Police pursuit sedans shall only be acquired for use in enforcement activities at locations where the demonstrated need for pursuit capabilities exists. Such vehicles shall not be acquired, or used, for any other purpose.

- Patrol sedans - Medium sized, four door sedans shall be acquired for use in enforcement activities at locations where the need for mobility and passenger carrying capability preclude the use of smaller sedans. Such sedans shall be equipped with standard police specifications.

- Medium sized sedans - Medium sized, two or four door sedans shall be accquired for use in enforcement activities at locations where passenger carrying capability is required but does not exceed 5 or 6 passengers. Such sedans shall not be equipped with standard police specifications. These sedans shall be equipped with either four or six cylinder engines.

- Small sized sedans - Small sized, two or four door, sedans of a minimal horse power shall be acquired for use in investigative or operational administrative nature where the need for passenger carrying capability is limited or absent and public transportation is not available or is impractable for the discharge of mission duties.

- Truck-on road 4-X-2

  Van -Vans shall be acquired for use in the detection, apprehension, and transportation of aliens in enforcement activities at locations where two wheel drive vehicle with passenger carrying capability exceeds six (6) but does not exceed fifteen (15) passengers.

  Pickup - Pickups shall be acquired for use in the detection, apprehension, and transportation of aliens; and may be used for surveillance purposes

and/or sensor support operation in enforcement activities at locations where pickup enclosures for passenger carrying capability and/or surveillance/sensor support operations are more economical than other two wheel drive trucks.

Carryall - Carryalls shall be acquired for use in the detection, apprehension, and transportation of aliens in enforcement activities at locations where farm and ranch checks line watch operations prevail and in which an alien transportation capability of up to nine (9) passenger exists.

Paddy wagons - This type vehicle is not appropriate for enforcement activities in the INS and is not to be included in future acquisition plans once the current inventory of vehicles have reached their turn-in age.

0 Trucks-off-road-4 X 4

Van - These vans shall meet the same acquisition policy criteria as stated above for 4 X 2 wheel drive and must be exclusively acquired for use in terrain inaccesable for 2 wheel drive. These vehicles shall not be acquired for multiple use or other purposes.

Pickup - These pickups shall meet the same acquisition policy as stated above for 4 X 2 wheel drive and must be exclusively acquired for use in terrain inaccessable to 4 X 2 wheel drive. These vehicles shall not be acquired for multiple use or other purposes.

Truck/utility/4 X 4 - Truck/utlity will be acquired for use in detection, apprehension, and transportation of aliens; and may be used for surveillance purposes and/or sensor operations in enforcement activities where 2 X 4 vehicles can not be used due to terrain. These vehicles shall not be acquired for multiple use or other purposes.

0 Special purpose vehicles/equipment - Special purpose vehicles/equipment shall be acquired on a case by case basis by the Service in support of enforcement activities relative to specific Service missions.

UTILIZATION POLICY

Vehicles acquired by the Service in accordance with the MOTOR VEHICLE ACQUISITION POLICY will generally be utilized only for their specified operational purposes.

BORDER FENCE

Senator DECONCINI. Something that has been dear to me for some time is the fence problem. We would like to know from whoever has the background to tell us what has happened with the contractor that allegedly supplied us with inadequate material.

Mr. CARMICHAEL. Senator, I think we can. I would like to call on Mr. Kennedy again.

Mr. KENNEDY. I said I was going to give you an update on where we are, maintenance and so on. I would like to supply for the record the fix we made to the contractor that did not supply us exactly the right materials at one time. That was corrected.

Senator DECONCINI. The right materials were finally supplied?

Mr. KENNEDY. Yes.

Senator DECONCINI. Full payment has been made but the Government has received the correct material in place?

Mr. KENNEDY. Yes. It turned out to be within a very, very small fraction of requirements. There were pricing adjustments, and the fence that was not up at the time we made that final inspection was corrected, so that the grade of metal in the fence that went up after that now meets contract specifications.

Senator DECONCINI. Was the fence that did not meet it replaced?

Mr. KENNEDY. It was not all replaced but it was strengthened in some places and what we have done is repair it. I think that overcame some of the weaknesses.

Senator DECONCINI. Can you give us anything else on the general fence program at some of the border cities?

Mr. KENNEDY. At the present time, we have 5.1 miles in place at Chula Vista, in Nogales the full mile is in, at San Luis we have 3.5 miles in, and at El Paso 6.7 miles.

Senator DECONCINI. Are you on schedule?

Mr. KENNEDY. Just about. I would have to check the actual procurement schedule.

Senator DECONCINI. When will it be finished?

Mr. KENNEDY. It is complete.

Senator DECONCINI. Mr. Chairman, I think the record should show there is no indication at least from this Senator that the fence is going to stop illegal flow, but it is certainly psychological and has some benefit from the standpoint of dispersing the flow.

INSPECTORS AT MIAMI AIRPORT

Mr. Carmichael, last year, on behalf of Senator Chiles, Mr. Crosland authorized an additional 15 inspectors at the Miami Airport due to the tremendous growth in international arrivals. How does that number of inspectors at Miami compare with what was there last year?

Mr. CARMICHAEL. Well, there were 15 added to the authorized force of inspectors bringing it up to about 61.

Senator DECONCINI. So that has been accomplished. Our records here show you are still down 7; you were down 7, you added 15.

Mr. CARMICHAEL. There have been some vacancies. We can fill them within the Service. We cannot hire from outside.

Senator DECONCINI. So what are you doing? Are you moving people there?

Mr. CARMICHAEL. We have people at Miami.

Senator DECONCINI. Will the 15 be restored?

Mr. CARMICHAEL. Well, the 15 are there now.

Senator DECONCINI. Can we expect that the seven that are short will be restored?

Mr. CARMICHAEL. As soon as vacancies can be filled. To maintain the net gain—let me put it this way if I may. There is always some slight vacancy as positions turn over. We did add our 15 positions, and that allowed us to add 15 bodies to the line. The Commissioner has established servicewide priority programs, and the second of his priorities is the maintenance of staff and concentration on major airports in the United States. So to the extent that we possibly can, we are proceeding to fill vacancies at major airports.

Senator DECONCINI. Can you give us some idea, the seven that are short under the freeze, and I understand the management problems that the Service has to address, can we look for in 6 months to have half or more of those on line?

Mr. CARMICHAEL. I certainly will say that is reasonable. But one thing, Senator, that faces us, we have now been alerted to the recommendations that we will be cut 200 positions in the inspections area. We carefully consider our workloads throughout the United States and in turn distribute the cuts, to our regional commissioners. Our regional commissioner for the southern region, who has jurisdiction over Miami, projects that the share of the 200 cuts for 1981–82 will be warranted to the extent of 6 in Miami.

Senator DECONCINI. So we are really talking at the very best we are going to have one of the seven replaced.

Mr. CARMICHAEL. Yes.

BORDER INSPECTIONS

Senator DECONCINI. Between 1979 and 1980 the number of persons inspected at the border jumped from 275 million to a total of 309 million. The justification only forecasts an increase of 15 million in 1981 and 16 million in 1982. So the increase for the 2 years is less than the actual increase between 1979 and 1980. How do you reconcile those figures?

Mr. CARMICHAEL. We do know that in the first 4 months of this fiscal year we have inspected some 6 million more people than we did in the last fiscal year. Part of this is accounted for by land border traffic, and among other impacts are thousands of American citizens who go across the border to purchase gasoline. When they leave they must return. I would say you would have to revise upward our estimates for this year and for next.

Senator DECONCINI. Last year, Mr. Carmichael, Congress did not pass the admissions legislation. It would greatly reduce naturalization and deportation paperwork. How much of the reductions for 1982 is based on the admissions legislation?

Mr. CARMICHAEL. Primarily that would be in the naturalization area; 33 positions are to be cut from the naturalization force in fiscal 1982 based on the prospect of the efficiency package. We have long pointed

out to the Congress the need for efficiency legislation. We believe that, in that program alone, productivity could be increased by one-third and the public better served. That is the program that is most affected by cuts in positions.

Senator DECONCINI. Thank you. I am glad to have that on the record because obviously that is an impressive figure of productivity increase.

Mr. CARMICHAEL. I might add, that it will not affect the quality of the work our offices do and the quality of the new citizens.

OVERTIME RESTRICTIONS

Senator DECONCINI. Last year the Congress restricted overtime $20,000 per employee, except where the Commissioner determined that it was possible to implement. What effect has this restriction had on overtime payment?

Mr. CARMICHAEL. The legislation became effective late last calendar year. We immediately put into operation a monitoring system. We are using our financial record system to look at the earnings of immigration inspectors on a pay period by pay period basis. About $750 per pay period in overtime is about what it would take to reach $20,000. So our officers are monitoring those earnings very carefully and identifying as early in the year as possible those inspectors who are in danger of exceeding the cap.

We have had several instances already, and we immediately alert the Regional Commissioners so he can take whatever steps he can take in staffing and adjusting of work force to balance that out and not have excessive earnings. There may be instances at some ports of entry, particularly preclearance, where the only alternative available to the Regional Commissioner would be the detailing of inspectors. This may in all likelihood be more expensive than the overtime earnings of slightly more than $20,000. So we do have this exception available to us but we are watching it very carefully.

Senator DECONCINI. In your judgment has that restriction placed a handicap on efficient service?

Mr. CARMICHAEL. Generally it has not, Senator. I think there might be some locations where we have to watch very carefully how the cap may impact on service to the inspection lines. But generally it has not.

Senator DECONCINI. Mr. Chairman, I have some other questions I will submit.

COMPARISON OF 1931 AND 1945 ACT OVERTIME

Excuse me, Mr. Chairman, let me go back to one other one here. Mr. Carmichael, can you describe the differences between the 1931 and 1945 act with regard to the payment of overtime to INS personnel?

Mr. CARMICHAEL. Without getting into an elaborate discussion of it. I think the impact is on inspections which take place on every Sunday and holiday throughout the calendar year. I think there are 61 or so of those days, plus we pay that double time.

Senator DECONCINI. Is that the 1931 act?

Mr. CARMICHAEL. That is the 1931 act. That is inspectional overtime which is similar to the 1911 act, which applies to the Customs Service. The difference between that, generally, and the 1945 act is that the lat-

ter is straight time-and-a-half overtime. That is a thumbnail sketch, Senator. If you wish we will elaborate and furnish more information.

[The information follows:]

COMPARISON 1931 AND 1945 ACT OVERTIME

The 1931 act applied to immigration inspection work only. It covers all general schedule grades 5–12 inspectional work on Sundays, holidays, and overtime work between 5 p.m. and 8 a.m. on all other days. For work up to 8 hours on Sundays and holidays, 2 days' wages are paid in addition to any other pay entitlement for basic salary. For overtime work, work in excess of 8 hours, on Sundays and holidays and between the hours of 5 p.m. and 8 a.m. on other days, payment is made at the rate of one-half day's pay for each 2 hours or fraction thereof, of at least 1 hour. The cap is 2½ days' pay for the entire period between 5 p.m. and 8 a.m. the following day and for the remaining 16 hours on Sundays or holidays which are not compensated at the rate of 2 days' pay. In effect, all time is paid at double time or more.

The 1945 act applies to any overtime work not covered by other statutory provision. It covers work at any time in excess of 8 hours in a day or 40 hours in a week and provides that unscheduled overtime work performed by an employee on a day when work was not scheduled for him or for which he was required to return to his place of employment, shall be considered to be at least 2 hours in duration. Overtime compensation under this act is assignable to personnel in all grades of the general schedule. For overtime work, payment is made at 1½ times the employee's basic hourly rate or at the minimum hourly rate for personnel in grade 10 of the general schedule, whichever is less. As of March 1981, the maximum rate is $14.76 per hour. The total pay—basic, 1945 act overtime and other premium differentials—may not exceed pay at the maximum rate for personnel in grade 15 of the general schedule for any pay period. The latter maximum rate is $1,927.20 as of March 1981.

The limitation of the 1945 act overtime does not apply to earnings under the 1931 act. Estimated cost savings of $5.5 million would be realized if the 1931 act is repealed and overtime computed under the 1945 act.

LACK OF SUPPORT

Senator DECONCINI. Let me just make the statement I have been very concerned for the few years I have been here about INS, and quite frankly the lack of support that I think your agency has received from past administrations. I have been critical of that. Quite frankly coming from a border state I feel your agency has been shortchanged over the years, and though there have been some areas of great disagreement that I have with your agency, I would like to see this administration take a far more positive approach toward getting the necessary resources and the commitment from the Attorney General so that we might have an effective enforcement as well as a service agency. I just wanted that for the record.

I think this committee has certainly done a job to bring that to the attention of the previous administration. I want to thank the chairman for joining that effort, and the basis of increased personnel for the border patrol, the vehicle deficiencies that we have tried to insist upon, and hopefully some leadership coming from the Attorney General that will provide you with the necessary resources that you need to accomplish this national mandate.

Mr. Chairman, thank you.

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CUBAN REFUGEE PROGRAM

Senator WEICKER. Thank you very much, Senator DeConcini. Vice President Bush was quoted recently as saying that the United States would like to send back undesirable Cubans. What percent of the refugees that came in last year's flotilla would be sent back?

Mr. CARMICHAEL. Let me ask a question. Did you say have been sent back or would be sent back?

Senator WEICKER. Would be. What is the status of any such deportation?

Mr. CARMICHAEL. I think we have considered this possible return in three categories. We have in a penitentiary-type detention some 1,750 Cuban persons who had serious criminal records when they got here. We identified at the outset probably 20,000 who had committed crimes of some sort, including very petty crimes and political crimes. We screened them very carefully. As a matter of fact we put some into hard detention who have since been released on reconsideration. But in the first category there are over 1,700 who have serious nonpolitical criminal records from Cuba.

A second group is a group of people who simply have indicated to us some time after they got here that they would like to go back. They are purely and simply people who said they just want to go home. They are not criminals, they have no problems, they would just like to go.

Also there is a group of people with mental difficulties. Some are in St. Elizabeth's Hospital. Others have less serious difficulties in that regard but they are receiving care and attention. There have been negotiations conducted on the part of the Department of State and the Cuban government. Of course, that was a matter of discussion between nations. It is my understanding that those currently have broken off. It would be hard for me to say what the future holds as far as sending persons back to the Fidel Castro regime.

Senator WEICKER. Your budget justification states over 1,600 Cubans have been identified as felons and are being maintained at Federal and State facilities. What is the cost to INS for these people?

Mr. CARMICHAEL. I will ask to be corrected if I am wrong. The Bureau of Prisons has been picking up the tab, if you will, for their housing. Our costs have been mainly those connected with the detailing of immigration staff, both to maintain immigration docket control and to conduct hearings. We are talking now about immigration judges, trial attorneys and the like.

CUBAN SUPPLEMENTAL

Mr. Kennedy do you have a cost figure on that?

Mr. KENNEDY. We have an increased cost of about $8.9 million in the supplemental at the present time.

Senator WEICKER. Your agency screened rather carefully this whole flotilla operation; is that correct?

Mr. CARMICHAEL. That is correct.

Senator WEICKER. And what were the total numbers in that latest flotilla?

Mr. CARMICHAEL. In the Cuban boatlift emergency—over 125,000.

Senator WEICKER. Out of that 125,000 how many would you say were refugees truly in the political sense? By that I mean fleeing from either the actuality or the possibility of persecution.

Mr. CARMICHAEL. Under the Refugee Act of 1980, Senator, of course, the person arriving at a port of entry, if I may approach it this way, may make a claim for asylum and in that application he states why he has fled his country and why he fears returning. We have taken those applications from practically every Cuban. It is inconceivable to think Cubans may not be applying for asylum. Those have not been adjudicated. We look to the Department of State with respect to an individual's claim as to why he cannot return. Because of the massive number, a great percentage of these claims have not been adjudicated. It would be hard for me to guess how many will qualify. I think I would be simply guessing to try to tell you how many meet the definition and those who would not.

Senator WEICKER. Did you find considerable numbers of those that came to the United States to either be with family here or achieve a better quality of life here.

Mr. CARMICHAEL. Many had close family here. One of the earliest surprises in the program in contrast to the past, was that while many Cubans were coming out, and had families in the United States, we discovered many had no families in the United States and in fact were being expelled.

CUBAN CRIMINALS

Senator WEICKER. One last question on the Cuban matter. I might add I have a series of other questions that I will submit for response to the record. But one last question on the Cuban matter. We are informed that there are plans to release some of the Cuban criminal entrants from prison facilities. We have documentation before the committee that apparently there are those who feel that would be a move not necessarily in the best interests of the population as a whole.

I have a letter in front of me from a Mr. Cummings of the Emerson House in Denver, Colo., to Mr. James Coyle of the Cuban-Haitain Task Force.

In conversation on March 5, 1981 with Mr. Noonan of the Atlanta Federal Penitentiary, I was informed that some of the 1,800 to 2,000 Cuban entrants currently held at that facility are being released through the task force's 3-month transition program. We feel strongly that only 3 months of transition is dangerously inadequate to prepare these individuals for survival in the American society. If this 3-month program is instituted, the result will be significantly increased risks of danger to the general population, overloading of the criminal justice system of localities such as Miami/Dade County has experienced, and a widespread backlash against the Cuban population.

Would you like to comment on that?

Mr. CARMICHAEL. Yes, I would, in two ways, Mr. Chairman. First of all there has been a panel set up to consider those people in hard detention and whether or not some can be released. They will be considered on a case-by-case basis. We are not the only members of that panel. People from the Bureau of Prisons sit on that panel as do representatives from other departments. Other Justice agencies are more familiar than we are with the penal system.

Generally, INS detains people under less than hardened conditions.

So we are relying on interagency people to consider whether a person is likely to be released. If they are released into a transition atmosphere, we will certainly listen to the views of those who have been asked to hold them. I would like to point out, however, that there is at least one U.S. District Court that has cautioned us that even though we have the authority to detain a person seeking entry into the United States while we go through the process of determining this, that there may be a limit thereafter as to how long we can hold them purely for immigration purposes. And this is all tied up in the review that we have underway.

AUTHORITY FOR RELEASING CUBAN DETAINEES

Senator DECONCINI. Is it correct that INS has the sole authority to make that determination as to release, even though you are consulting with the Bureau of Prisons?

Mr. CARMICHAEL. We will consult and it will be a panel decision.

Senator DECONCINI. But could you do it on your own?

Mr. CARMICHAEL. We would do it on our own only after careful consideration of the program.

Senator DECONCINI. Really it is an advisory opinion and you can either take it or not.

Mr. CARMICHAEL. I might also add those who are still awaiting their formal hearings in all likelihood would remain in custody because we certainly have clear authority to do that. I think within the rulings of the court in Kansas we are more concerned with those who have completed a formal proceeding and in fact are subject to final orders of exclusion. Then the question is, how long can we hold them. And the interests of the public have been taken into consideration.

ACTING COMMISSIONER CROSLAND

Senator WEICKER. I would like to thank you for your candid answers to the questions of the subcommittee. We will take a look at this budget.

The committee might have further communication with your agency in regards to whether or not certain of these figures should be adjusted, in the main upward, to assure a level of performance is maintained with a standard of excellence. As I say, you can go to the Budget Committee and they can knock it down, and that probably will occur. But I intend to see the responsibilities of this subcommittee discharged in proper fashion.

You have a mission to perform and you should have the resources to perform that mission.

I would also like to use this occasion to compliment your silent partner, Commissioner Crosland, who, although he carries the term "Acting", has in every way filled the position with a distinction that should attach to one permanently in that capacity. That has been recognized by me and other members of the committee. I don't know what your future holds, but I can assure you of this: I think you have conducted yourself and this agency, in a manner which has my admiration and my great respect.

Senator DECONCINI. Mr. Chairman, if you would yield, I would like to join in that accolade of Mr. Crosland. I think they are very trying circumstances, and as he knows a lot better than you and I do, at no increase in pay whatsoever, and many more headaches. Indeed my respect is very high for this man who put his country and service above his own desires to either go someplace else or sit there and let someone else do it.

And I want to thank you sincerely from the standpoint of the people of Arizona and this country for your dedication in a very trying time in my opinion. And I am sorry it was so trying for you and personnel of your agency, but I am hopeful that better times are afoot.

Thank you.

SERVICE PERSPECTIVE

Mr. CARMICHAEL. Mr. Chairman, would you permit me to say something?

I am a career officer and I have 27–28 years of government service, 25 in Immigration Service. And the last year and a half undoubtedly has been the most trying period, I think, in our history. We have had crises before, and we have had periods of relative lull, but it has all come at us since November of 1979, and I think the Service has performed well. But what I would like to do mainly, if I may, and not get thrown out by my silent partner here, is to add my thanks to him. As one of the management team, it has been an awful time and I think the Service has performed pretty well, all things considered, in the last year and a half.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. The committee has some questions that we will submit for you to answer.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Visa Waiver Program

The Select Commission recommends that a visa waiver program be established for tourists and business travelers from certain countries. What impact would such a program have on the resource requirements of INS?

The proposed visa waiver program will create additional work for the immigration inspectors at the ports of entry and the Service's various supporting units. Inspectors will be required to conduct the screening previously completed by consular officers; the Records, Statistics and Automated Data Processing units will be required to maintain, prepare, and disseminate additional statistical data to regulate and monitor the program. With an expected increase in workload combined with the proposed FY 1982 cut of 100 inspections positions, further backups and delays will result at the ports of entry.

Professionalism of INS Personnel

Both the Select Commission and the President's Management Improvement Council reports recommend that the professionalism of INS personnel be increased. What are your plans to do so? What are the costs associated with this effort? Does the FY 1982 budget reflect any of these costs?

While the overall dedication of INS employees has been quite high and they have responded to a number of major crises in a competent way, it is clearly recognized that a considerable amount of further training is required to enhance professionalism. INS will continue to include integrity training in all its basic and advanced training classes. The basic Immigration Officer and the Border Patrol training courses currently incorporate 24 hours of human relations and cultural awareness, instructions on EEO, 200 hours of Spanish-language training and several hours of Latin American culture.

In addition, a new director for the Office of Professional Responsibility was hired over one year ago. There has been a reorganization of the program focusing attention upon serious allegations. A number of indictments have been brought. Civil Rights complaints have dropped 50 percent over last year. Responsibility of supervisors has been emphasized, and this will be an element in performance evaluation. We will continue to have an aggressive program.

Reduction of Adjudications Positions

A major objective of adjudication operations program - outlined in the January justification - was to reduce the backlog to an acceptable range of 150,000 to 200,000 cases. In fact, the backlog has grown from 251,756 in 1979 to 376,000 estimated for 1982. With a 300 position reduction (from 870 to 570 positions), it would appear

that the Administration is resigned to even greater backlogs. Is that correct? What can be done within this budget to reduce this backlog?

We expect a reduction in applications for extension of temporary stay by foreign visitors by increasing the visitor's initial period of admission. Therefore, the projected backlog is 267,000 cases.

Will the reduction in personnel in any way effect the responsibilities or workload of the State Department consular officers?

The reduction of 300 positions in the adjudications function was based in part on the assumption that some of the visa petition and waiver of excludability functions would be transferred to the Department of State. The transfer would have placed the responsibility for adjudicating some visa petitions and some waivers (approximately 70 percent or 400,000 cases annually) upon the consular officer who is considering an application for a visa to enter the United States. However, no such transfer of function will be made.

Seized Vehicles

The justification for your anti-smuggling program indicates that in 1980 INS seized 2,569 conveyances with a total appraised value of $11 million. What is the disposition of this property? How much is retained by INS or other Federal agencies? What sale proceeds have been returned to the Treasury?

Of the 2,569 conveyances seized during FY 1980, 855 have been sold through the General Services Administration (GSA). The remainder of the vehicles are in varying stages of the seizure process leading to retention for use by the U.S. Government or sale by GSA. To date, INS has retained 55 vehicles for its own use; however, INS does not have authority to release seized conveyances to other U.S. agencies. This jurisdiction lies within GSA. During FY 1980, GSA sold 855 seized conveyances receiving gross proceeds of $501,744, of which $307,100 in reimbursement costs were turned back to INS appropriations and $132,669 to the General Fund. $62,005 has been recouped which is still being held in a suspense account.

Supplemental Request

The original supplemental request of $13.1 million has been reduced by $4.263 million. The justification indicates absorption of increased costs for vehicles and aircraft fuel as well as the other items. Has this decision forced you to curtail border or interior enforcement activities?

No. Neither border nor interior enforcement activities have been curtailed.

Iranian Expulsion Program

Now that the hostages are home, what is the status, and priority of the Iranian expulsion program?

The Iranian expulsion program continues to remain a priority within the INS enforcement operation.

Since the program started, how many Iranians have been expelled?

Total verified departures of Iranians under docket control since November 3, 1980 is 1,972 verified departures and 386 deportations.

How many have been granted some type of legal status?

The statistics are not available in the Central Office to answer this question. They can be discerned from each district office, which will take some time. At the beginning of the Iranian crisis, and prior to April 11, 1979, some nine to ten thousand petitions (for adjustment, asylum, change of status) were filed by Iranian nationals. After April 11, 1979, no petitions were acted upon except for those Iranian nationals who had filed claims for asylum. The only adjustments available were those for close family relatives and for humanitarian concerns.

How many Iranians are currently in the country legally? Illegally?

There are approximately 64,300 Iranian students in the United States, of which 63,719 have been interviewed. Of the students interviewed, 7,554 were found to be illegally in the United States. An additional 13,648 other Iranian nonimmigrants were located illegally in the United States.

Management Improvements

The President's Management Improvement Council recently issued a report on management improvements in the INS. Could you give us a status report on implementation of the report's recommendations?

Many of the PMIC recommendations have already been implemented, such as advanced training, reorganization of the contracting and procurement function and improvement in the personnel program. INS training programs now emphasize the enhancement of professionalism, heighten sensitivity to the public and promotion of analysis of needed skills. The contracting and procurement function is nc longer part of General Services and a new contracting officer has been hired. As part of the improvement in the personnel program, INS managers are being held accountable through performance standards and merit pay procedures.

Contingency Plan for Influx of Refugees

In the past few years INS has had to deal with at least three unexpected waves of immigrants. Each time, INS resources and abilities have been strained and normal workload disrupted. Based on the experiences with the Southeast Asians, Cubans and Haitians, what

have you done to prepare yourselves for dealing with future similar situations? Have you developed a contingency plan to cover such exigencies?

Yes. A contingency plan to handle future emergencies has been formulated which provides for coordination between the Immigration and Naturalization Service, Department of Justice and other agencies.

Under this plan INS has the responsibility to provide security at the processing camps as well as perform the immigration processing at the intial point of arrival and at any other processing facilities that may be in operation.

Automation Support

What is being done to upgrade your information management system and file retrieval techniques?

A long range ADP plan is being developed which will set targets for overall INS automation support during the 1980's; however, this does not imply that further automated support will be delayed until the latter part of the decade. An integral part of the long-range planning process will be a transition plan which will describe, on a year-by-year basis (beginning with FY 1982), the automated systems support and benefits to be provided as INS moves in logical steps toward full automation.

Additionally, current initiatives will be incorporated and adjusted to assure that they are supportive of the INS long-range plan. These current initiatives will yield significant new benefits to INS in the near term and over the next two to three years, and include:

- The automated Master Index System which contains approximately 15 million records;
- Terminal installations for Master Index Remote Access (MIRAC) support for 38 INS field offices in FY 81 and 72 (total) offices in FY 1982 (dependent on funding);
- Data Communications in support of MIRAC, FMIS and ADIT during FY 1981 and FY 1982;
- Interim systems development for Naturalization Casework Support and Deportation Docket Control scheduled for implementation in FY 1982;
- The Financial Management Information System, which includes our accounting and personnel information systems, is now operational;
- The ADIT Program produced 655,000 alien I.D. cards in FY 1980 and will produce 800,000 cards in FY 1981;
- Nonimmigrant information requirements study performed under contract will provide the basis for improved automated support in this area with development beginning in late FY 1981 or FY 1982;

- A word processing study has been performed and a draft procurement document prepared which will be used contingent upon funding to provide Servicewide word processing support (currently the Service has 120 pieces of word processing equipment which are used to prepare general correspondence and changes to operating manuals, handbooks and regulations);

- Intrusion Detection Systems have been installed at ten Border Patrol Sectors;

- Twenty Telephone Information Processing Systems are currently operational and nine more are being installed in FY 1981.

Does this budget allow for moving ahead with automation?

The requested level will allow only for current operations to be maintained.

What effect has the freeze on procurement of equipment had on this effort?

Since the freeze on procurement of ADP equipment and services only involves current year operations, it has had no impact on the long-range automation efforts.

Alien Worker Verification System

The Alien Documentation (ADIT) program budget is being reduced by 25 positions. The Select Commission has recommended an alien worker verification system that would require expenditures in the range of $44 to over $300 million depending on its complexity. To what extent did the Select Commission and INS consult in the development of these recommendations?

The consultations between the Select Commission and INS dealt only with the technical feasibility and operational aspects of an alien worker verification system, not with the Service's resource needs for current or future operations.

Given the rapid advances in technology, what is the anticipated length of time before the current ADIT system becomes obsolete?

The ADIT system is not particularly vulnerable to technological obsolescence since its main functions of producing documentation and creating a central record of card data involve only the use of conventional computer hardware and record storage and retrieval processes.

What is the cost effectiveness comparision among the key entry, optical character reader (OCR) and the newer encoded magnetic strip type identification systems?

For INS documents, only OCR technology allows for both human and future machine readability. All other technologies require machine support to ascertain card information. Many of INS' operations require the identification of individuals in remote locations where machine support is not practicable.

Banks and credit card companies seem to find the magnetic strip card system extremely reliable and safe. To what extent have you analyzed the feasibility of using such a system?

OCR-read capability magnetic stripe were tested in 1976 and 1977. It was found that the severe standards required for cards used daily for identification, particularly in border areas, could not be met by the magnetic material. The decision was then made to proceed with the optical character technology, also a widely-used methodology, since it allowed for both machine and human readability.

Cargo Preference Act

The original budget requests $125,000 to ship household goods to overseas posts. This has been reduced by $63,000, contingent on adoption of amendments to the Cargo Preference Act to permit shipments on non-American vessels. Do you know if this is a decision, made by OMB, with respect to all agencies which have overseas shipments?

The Administration has not made a decision to seek an amendment to the Cargo Preference Act to allow shipment of goods on foreign flag vessels.

Questions Submitted by Senator DeConcini

Efficiency Legislation

Last year the Senate enacted the "Efficiency Legislation" that would greatly reduce Immigration and Naturalization Service paper-work. How much of the position reduction proposed for 1982 is based on approval of the "Efficiency Legislation"?

Because we have cited the savings and the increased productivity resulting from passage of the efficiency legislation, it seems certain that the proposed reduction of 33 naturalization positions is directly attributable to that legislation's approval.

Reduction of 605 Positions

How is it that 605 positions are to be deducted from the INS budget with no associated reduction in work years or dollars?

The FY 1982 Carter budget eliminates 605 INS positions in an effort to maintain current employment levels. Most of these positions are currently vacant. The funds available to support these positions will be used in FY 1981 and 1982 to absorb pay raise costs.

In 1981, INS was directed to absorb $10.9 million in pay raise costs, and in 1982, $7.2 million in pay raise costs.

Lapse Rate

What lapse rate is used in 1982 on the 9,531 permanent positions now requested?

The lapse rate is one percent.

Repeal of 1931 Act

Realistically, what are the chances of getting Congress to repeal the 1931 Act?

Based upon the Select Commission report, and upon the interest shown by both the Oversight Committee and the Appropriation Committee in our hearings it appears that the chances of repeal of the 1931 Overtime Act are probably better at this time than they have ever been. We are optimistic that the Congress will recognize the clear merits of this cost cutting proposal.

$20,000 Overtime Limitation

Last year the Congress restricted overtime to $20,000 per employee, except where the Commissioner determined that it was impossible to implement. What effect has this restriction had on overtime time payments?

The Service has implemented a procedure to monitor individual overtime earnings to assure that no one exceeds the $20,000 cap. Ports of entry are utilizing these monitoring reports in determining overtime assignments.

Research and Development

The proposed appropriation language includes the customary provision that $400,000 for research remain available until expended. What is the overall cost planned in the research program for FYs 1981 and 1982? How much of the 1980 research program was unobligated on September 30, 1980?

For FY 1981 and 1982, INS plans to obligate $1.432 million for research and development, of which $1.031 million is for FY 1981 and $400,000 is for FY 1982. As of September 30, 1980, $631,852 remained unobligated.

Effect of Restoration of 160 Border Patrol Positions

Between 1980 and 1981 the number of deportable aliens forecast to be apprehended increased by 320,000 to 1,004,000. The same 1,004,000 is forecast for 1981. If the 160 positions were restored to the border patrol, what would be the additional number of apprehensions expected?

With the restoration of 160 border patrol positions, an additional 80,000 apprehensions could be expected.

Acquisition of Horses by Border Patrol

How many horses does the border patrol now have and how were they acquired at no cost to the INS?

The Border Patrol currently has 18 horses of which 16 are rented by the Chula Vista Sector at a cost of $200 each per month; the remaining 2 are rented by the Tucson Sector at a cost of $300 each per month. These costs include stabling, feed and care of the horses.

The Border Patrol is attempting to acquire horses from private sources such as the Morgan Horse Breeders Association, at no cost to the U.S. Government to replace the rented horses. Acquisition of this nature is used by several law enforcement agencies, notably the U.S. Park Police Mounted Unit.

Restrictions on Apprehensions

Have all restrictions now been lifted on the apprehension of illegal aliens?

On November 26, 1979, the Attorney General issued a statement discontinuing area control investigations at places of residence except in unusual circumstances and recommended that future enforcement efforts "be focused primarily on employed undocumented aliens at their places of employment." This policy was in effect until March 28, 1980, when the Attorney General, in order to promote the fullest cooperation with the census, directed that, except in specific instances, Service officers not conduct investigations at places of residence or employment without a search warrant or court order authorizing entry.

On January 13, 1981, the Attorney General established that the Service search policy shall be to:

1. Restrict searches of residences to routine casework or searches authorized by warrant or court order;

2. Rely on consent in searches of places of employment and other non-residence locations; and

3. Develop a program using search warrants, to work jointly with other Federal and state agencies to uncover immigration and other violations of law by employers that may be attendant to the employment of illegal aliens.

The Service is now taking the lead in establishing interagency task forces at the local level which shall seek to identify those employers who habitually employ illegal aliens.

Haitians

The justifications predict an average inflow of 1,500 Haitians a month. What was the monthly flow since October 1980? Does the Reagan Administration plan to continue to deal with the Haitians as refugees?

The average monthly flow of Haitians from October 1980 through February 1981 was 1,735. While the Reagan Administration is in the process of reviewing our Haitian policy, no decision has been made to deal with the Haitians as refugees.

OFFICE OF JUSTICE ASSISTANCE, RESEARCH, AND STATISTICS

STATEMENT OF ROBERT F. DIEGELMAN, ACTING DIRECTOR

ACCOMPANIED BY:

CHARLES A. LAUER, ACTING ASSOCIATE ADMINISTRATOR, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION
HARRY M. BRATT, ACTING DIRECTOR, NATIONAL INSTITUTE OF JUSTICE
BENJAMIN H. RENSHAW, ACTING DIRECTOR, BUREAU OF JUSTICE STATISTICS
ALLEN J. VANDER-STAAY, BUDGET OFFICER
KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION
CHARLES R. NEILL, CONTROLLER
WADE B. HOUK, DIRECTOR, BUDGET STAFF

BUDGET REQUEST

Senator WEICKER. Our next request is that of the Office of Justice Assistance, Research, and Statistics. The amount of the request is $61,156,000, a decrease of $102,860,000 from the 1982 base. $21,923,000 provides funds for law enforcement assistance, primarily the Public Safety Officer Benefits Act. $9,423,000 is for staff support to NIJ and BJS and the phase-out of the juvenile justice program and $39,233,000 is requested for research and statistics programs.

Appearing on behalf of this request is Robert Diegelman, Acting Director of the Office of Justice Assistance, Research and Statistics. Accompanying Mr. Diegelman is Charles Lauer, Acting Associate Administrator of Juvenile Justice and Delinqnency Prevention; Harry M. Bratt, Acting Director, National Institute of Justice; Benjamin H. Renshaw, Acting Director of the Bureau of Justice Statistics; Allen J. Vander-Staay, Budget Officer; Kevin D. Rooney, Assistant Attorney General for Administration; Charles R. Neill, Controller; and Wade B. Houk, Director, Budget Staff.

PREPARED STATEMENT

Mr. Diegelman, we will accept your statement in the record in its entirety at this point. You may present it any way you want.

[The statement follows:]

STATEMENT OF ROBERT DIEGELMAN

I am pleased to have the opportunity to appear before you in support of the 1982 budget request for the Office of Justice Assistance, Research, and Statistics. The request is for $61,156,000 and 214 positions which represents a net decrease of $102,860,000 and 286 positions below the $164,016,000 adjusted appropriation and 500 positions authorized for fiscal year 1981. These reductions support the President's commitment to reduce federal spending in order to minimize inflation, and ensure the nation's economic recovery. The reductions are also based on the belief that federal justice subsidies to State and local criminal justice programs should be reduced or eliminated because state and local agencies should be capable of assuming greater responsibility in these areas.

The request for $61,156,000 provides funds for two appropriations. The sum of $21,923,000 and 125 positions is for the Law Enforcement Assistance (LEA) Appropriation, a reduction of $105,252,000 and 265 positions below 1981. The $12,500,000 will provide for the payment of benefits to survivors of public safety officers killed in the line of duty. The remainder of the LEA appropriation, $9,423,000 will fund staff to provide support services to the research and statistics programs as well as to phase out the LEAA program and begin phase out of the juvenile justice program. Included in this request is $761,000 for uncontrollable increases. This budget also assumes transfer of 70 positions in the OJARS Audit office to the Department of Justice for consolidation with the central Department Internal Audit Staff.

No new funds have been requested for the juvenile justice programs. These programs have achieved remarkable results in reducing the number of status offenders in institutions. Many other excellent improvements have been made to the juvenile justice systems throughout the country. We believe that the program has gone a long way in achieving its objectives and has amply demonstrated that the goals of the authorizing legislation are attainable. However, we also believe that the burden of funding the various juvenile justice programs should be shifted to the state and local levels where responsibility lies for public safety. We know that many of the states have institutionalized programs begun with federal funds provided by

this program and we believe that many more will follow suit because many of the programs have proven successful. We also believe that the objectives of programs such as this should be met through block grant programs administered by the Department of Health and Human Services.

The second appropriation under the OJARS umbrella is for Research and Statistics. A total of $39,233,000 and 89 positions are requested for these programs. This is a net increase of $2,392,000 over the anticipated appropriation for fiscal year 1981 and a decrease of 21 positions. $1,400,000 of this increase is for uncontrollable cost increases. A program increase of $1,160,000 will permit a modest increase in justice statistical programs. The decrease of 21 positions and $168,000 is a result of of the decision to leave support functions centralized under the Law Enforcement Assistance Appropriation to achieve the optimum use of available resources and to reduce program positions commensurate with program reductions which were made in fiscal year 1981.

The requested funding level for the research, evaluation and demonstration programs is the same as the anticipated appropriation for fiscal year 1981 — $19,200,000. This funding will continue research activities of the National Institute of Justice concerning the causes and control of crime, and the effectiveness of the Nation's law enforcement and justice administration programs. Such research, which is far beyond the financial capabilities of hard pressed State and local criminal justice agencies, can lead to the identification or development of new, more effective strategies to deal with crime and its perpetrators.

The Justice statistical programs, administered by the Bureau of Justice Statistics, collect data on crime and the criminal justice system, both through national-level data collection efforts and support for state level statistical capabilities. There is no other significant source of accurate and timely statistics concerning the operation of systems for the administration of justice, victims, offenders, and correctional programs.

It should be noted that in a period of diminishing resources and fiscal constraints, accurate information about crime and the justice system is essential to the efficient allocation of scarce resources at the Federal, State, and local level. However, as with research, State and local agencies are in no position to fund major statistical activities on their own.

The appropriation anticipated for fiscal year 1981 includes a request for supplemental funding of $17,034,000 to maintain a functioning research and statistics program designed to enhance the nations ability to control crime and measure the progress of the criminal justice system. A supplemental has also been requested in the amount of $807,000 for increased pay costs in 1981. The available funding in 1981 for research and statistics programs is only $19,000,000 which is $24,768,000 less than the 1980 appropriation. The supplementals would restore the funding level to $36,841,000 which is still $6,927,000 under the 1980 appropriation.

This concludes my prepared statement, Mr. Chairman. I shall be happy to answer any questions you or the other members of the Subcommittee may have.

OPENING STATEMENT

Mr. DIEGELMAN. Thank you very much, Mr. Chairman.

I will forego the introduction of the gentlemen from the Justice Department whom you have already met.

I would, however, so you can connect a name with a face, introduce the members of the management team.

To my immediate left, Mr. Vander-Staay, to his left, Mr. Lauer, to his left, at the end of the table is Mr. Bratt. Finally, directly behind Mr. Bratt is Mr. Renshaw for the Bureau of Justice Statistics.

I would like to explain the role I am playing here on the management team. As you know, under the Justice System Improvement Act of 1979, the LEAA program was reconstituted basically as five separate bureaus, each with a Presidential appointee heading up that bureau. My role as Director of OJARS is to coordinate the activities of the other bureaus and to provide staff support to them as well as to serve as spokesman on the consolidated budget.

I will, with your permission, give a very quick overview of the impact of the proposed budget and the rationale behind it.

If you, or other members of the subcommittee have any substantive questions, I will, with your permission, defer to my colleague who has responsibility for that particular bureau.

The budget request that you have before you for fiscal 1982 is, I might point out, as you already indicated by the size of the numbers, a very significant decrease in the size of Federal funding in both the criminal justice and juvenile justice areas. This is not something new, as I am sure this committee is aware. It was begun in fiscal year 1981 with the proposal of the Carter administration to basically phase out the Law Enforcement Assistance Administration.

This request takes it one step further. Under the Reagan administration's proposal it will also end funding in the area of juvenile justice. What that means, overall, is that we are proposing a phase-out budget ending basically a decade of Federal funding for State and local governments in the area of crime control under the Justice System Improvement Act, and about 7 years' funding in the area of juvenile justice programs.

The budget request that is proposed represents about an 80 percent cut in the funds available for crime control since fiscal 1980, and a 60-percent cut in personnel, which, compared with a fiscal 1981 base, is actually a 75-percent cut in grant funds and a 60-percent cut in on-board personnel.

The remaining portions of the budget are primarily $21,923,000 requested for the Law Enforcement Assistance appropriation, a majority of which, $12.5 million, is for the continuation of the public safety officers benefits program. The remaining $9 million is to be used primarily for the administration necessary to phase out the LEAA program and the juvenile justice program, and also to provide for uncontrollable increases.

The second appropriation is for the research and statistics programs.

JUVENILE JUSTICE PROGRAMS

Let me comment, also, in terms of juvenile justice aspects of the Law Enforcement Assistance appropriation. The juvenile justice program in fiscal year 1982 is being totally zeroed out. This is a decision that is based not simply on the state of the economy, although obviously it is a part of the concerted effort on the part of the Reagan administration to reduce Federal spending, but also on the fact that to a great extent you are talking about a program which since 1974 has made a very real achievement in meeting the legislative goal for which it was established—primarily the deinstitutionalization of status offenders. As of this point, and there is still a continued funding of the program in fiscal year 1981, there are 50 States and territories who are participating in the program, 41 of which have already reached or nearly reached substantial compliance with the statute, 36 of which, will this year, reach full compliance with the standards laid down in the statute.

To be exact, at the end of fiscal year 1981, the States will have effectively removed 173,000 status offenders from secure correctional and juvenile detention centers.

Because of this record of success, and also with the strong record of State and local governments picking up the programs funded under this act, and the fact that almost all the States already in the program have legislation or policies which require the deinstitutionalization of status offenders, it was a policy decision on the part of the Reagan administration that Federal funding in this area be terminated. To the extent the job was not complete, and where there is a continuing need for juvenile justice programs and services, the administration is proposing a health and human services block grant to meet any remaining needs in this area.

As a matter of fact, the latest discussion between HHS and the Department of Justice indicates the possibility of a line item or provision for authority actually being included in that block grant program for juvenile justice services.

RESEARCH AND STATISTICS

The remaining portion of the $61 million which is requested for fiscal year 1982 is for the research and statistical components of the former LEAA program which are now set up as independent bureaus, the National Institute of Justice and the Bureau of Justice Statistics. In the research budget in 1982, no increase is requested at all compared to fiscal 1981. In the statistics area there is an increase of $2.4 million which is requested primarily due to uncontrollable increases. A slight increase is requested, on the order of about $900,000, that is primarily directed toward redesign of the national victimization surveys and also for the evaluation of the issues involved in the transfer of the Uniform Crime Reports from the Federal Bureau of Investigation to the Bureau of Justice Statistics.

In concluding my opening remarks, I would like to point out that over the years, funding in the area of crime control and criminal justice system improvements—we are talking about $7.5 to $7.8 billion of Federal funding—have been extremely controversial, as I am sure you are aware.

The Reagan administration has proposed a budget that basically recommends a much more structured, focused and limited role, one that is primarily limited to national research and statistical activities, since State and local agencies cannot afford to fund major research and statistical activities on their own.

This request provides a limited level of funding for national R. & D. effort and statistical programs, yet provides viable Federal roles for the continuation of funding in the crime area.

Those basically are my comments on my prepared statement. I would be happy to answer any questions or ask my colleagues to answer any further questions you may have.

JUVENILES IN DETENTION FACILITIES

Senator WEICKER. As to whether or not there is a line item in the block grants under HHS in Juvenile Justice. If you remain true to the principle being espoused by the administration, it would hardly be appropriate to start line item block grants.

How many children are currently being held in jail?

Mr. LAUER. The number of juveniles still in jails and lockups probably ranges up to half a million per year. We don't have exact statistics.

As a result of the 1980 amendments, a study was commissioned by the administration to determine that figure. There are still about 50,000 nonoffenders or status offenders held in secure detention facilities. That reflects a reduction of 173,000 who have been removed since 1975. There are still 50,000 remaining.

Senator WEICKER. One of the purposes of the Juvenile Justice Act was to provide alternatives to the incarceration of status offenders. How would this objective be met without the OJJDP program?

Mr. LAUER. Again I think the block grant program would have to meet these objectives. I have talked to some of the States about whether or not they would have any success in obtaining funds for removal or for separation, and some of them expressed optimism based on an assumption that there would be an earmark in the block grant program.

If there is no earmarking, they aren't too optimistic that they could compete with the social service providers in the State, because the Juvenile Justice Act, according to them, is a reform effort. The efforts in the Juvenile Justice Act reform program wouldn't compete as well with the social service agencies.

ASSUMPTION OF FEDERALLY FUNDED PROJECTS BY STATES

Senator WEICKER. Well, that is an honest statement. I am glad to have it on the record. I suspect that is my best guess as to what is going to happen.

Can anybody respond to me as to what, for example, the experience has been with LEAA? We are in the second year of phasing that out.

Mr. DIEGELMAN. Yes.

Senator WEICKER. What has been the experience with the States in picking up those programs?

Mr. DIEGELMAN. It has been very good, as a matter of fact. As of our latest figures, even if you take the worst assumption rate, it is on the or-

der of about 65 percent. This is according to an advisory commission for intergovernmental relations' study done in 1976.

According to our latest figures, which are much more recent, and which exclude those one-time efforts like training programs that are not intended to be picked up, we are getting clear indications of an assumption on the order of 85 percent of programs that have been funded for 2 to 3 years with Federal funds eventually being picked up by State or local governments.

Of course the other angle to the question I haven't addressed is the extent to which the planning and coordination activities being funded by the Federal Government are being picked up by States. Our best estimate is approximately 40 percent of State planning agencies will continue as an arm of the States' executive branches, but only about one-quarter of the local coordinating units will be picked up, primarily in major metropolitan areas where there is a strong mayoral commitment to crime control and the necessity for crime control staff.

Senator WEICKER. Of course that same metropolitan area may have a strong commitment but not have any funds.

Mr. DIEGELMAN. Well, you know, it is a choice that is extremely difficult for the Federal Government to make. As I indicated, we have expended almost $7½ billion in this area, and you can get into a tremendous dialog and prolonged debate of what the impact has been on State and local governments.

The one thing everybody points to is that the crime rates continue to grow rapidly. We can question whether that is a responsible indicator to measure the success of the program. The Federal involvement over the last 5 years has gradually dwindled down to a very small portion of the total amount of criminal justice expenditures in the system. I think at this point if you count every dollar that the Federal Government puts into law enforcement and criminal justice, it represents only 13 percent of the total national criminal justice expenditures.

I think that local governments are going to have hard choices to make. The Federal Government is making those right now. Given a limited amount of resources to spend on social problems, where do you put them?

VIOLENT CRIMES

Senator WEICKER. There is a lot of rhetoric coming out about violent crime and a commission to study violent crime; but as I have sat here in these hearings and have had various agencies come before me, all I see is a declining commitment of resources.

Now I tell you we can go around yelling "violent crime", and put study commissions together until we are blue in the face, but if we don't put our money where our mouth is, not much is going to happen in the right direction.

I have to wonder when I see a situation like juvenile justice, whether this program doesn't meet the aspirations of the administration as a prudent and effective use of money in the sense of getting these people at the beginning of the chain rather than allowing them to proceed to where they indeed become a very large expense to the Federal Government. Where is the cost savings?

Mr. DIEGELMAN. Let me back up to the first part of your statement. We have a new administration, that has been in since January 20, and we have a sincere commitment by the Attorney General to look at violent crime and the Federal role. He has not ruled out the possibility of exploring all the resources and techniques available on the part of the Federal Government to respond to the violent crime problem, and in recent public hearings he has indicated there are things we can learn out of the past Federal involvement in this area and the money that has been spent. What we might be talking about is not necessarily a replacement program, but a much more accurate targeting of resources in the violent crime area.

I think that is more than rhetoric. I think the experience of LEAA, of throwing money at a crime problem with a considerable amount of discretion on the part of State and local governments on how to spend it has led to some serious abuses and some horror stories. You are as familiar with them as I am. I think there are some success stories out of LEAA, however, and in the juvenile justice area.

If we took the successful programs and targeted a very limited and reasonable amount of Federal funds, it could show an impact over a period of years. This does not mean the UCR is going to drop down over a 5- to 10-year period, but I am talking about programs like sting, like some of our programs in the juvenile area directed toward serious juvenile offenders, like the new pride project in Denver, programs like that. I think the new administration and the Attorney General deserve the opportunity to at least take the time to examine our experience in this area. I am not talking about a commission that is going to take years to study the problem. I am talking about a high-powered group who will take a look at everything we have done, everything that is possible to do, and come up with reasonable response to the Nation's concern about juvenile justice and violent crime.

We are all aware it is a problem. Anyone who reads Time or Newsweek is aware of it. Regardless of whose numbers you take, every third household in this country has been hit by some type of serious crime.

CUTBACK IN FUNDING FOR ANTICRIME PROGRAMS

Senator WEICKER. I am afraid I have to inform you, aside from the rhetoric, whether it is justice or investigation, a lot of these matters that are level funded are cut. I couldn't agree with you more that money is not the entire solution to the problem. On the other hand, as I have stated many times in these hearings before, the cop on the beat probably is the best insurance against much of the crime this administration is contemplating in its violent crime rhetoric, and it costs money. It costs money—pure and simple. You can't go through all this budget balancing and then also say, we will take it away from this area and not have deleterious effect.

I am especially upset by the juvenile justice cutback. I think it is far too soon to evaluate whether it deserves this kind of a zero funding, and that is what we are talking about, zero.

Well, in any event, I do not see there is any point in chewing over this. I have specific questions to submit to you which I want responded to for the record.

PRIVACY AND SECURITY OF CRIMINAL HISTORY INFORMATION

The Bureau of Justice Statistics has been funding, a number of projects in the area of privacy and security of criminal information. The original budget request was $20,495,000 for all justice statistic programs. This has been reduced by $4,820,000, and the justification specifically states that this will require reductions in areas such as examination of issues touching on the privacy and security of criminal history information.

Is this a result of the anti-inflation program?

Mr. DIEGELMAN. With the chairman's permission, I will ask Mr. Renshaw from the Bureau to respond.

Mr. RENSHAW. Yes, Senator, that reduction was one of those that it was necessary to make to accommodate the budget.

Senator WEICKER. How much are you budgeting for fiscal year 1982 as opposed to fiscal year 1981?

Mr. RENSHAW. I would like to submit that for the record, but roughly I would say we will have something in the area of $500,000 in 1981, against a current activity of roughly $1,300,000 in 1980.

[The information follows:]

BJS PRIVACY AND SECURITY PROGRAM: EXISTING AND PROPOSED FUNDING LEVELS

The following is a summary of the existing and proposed funding levels for the BJS privacy and security program. The program implements the requirements of section 818 of the JSIA (formerly section 524 of the Crime Control and Safe Streets Act of 1973, as amended) and is intended to provide leadership and coordination in connection with efforts to insure the confidentiality of statistical data and the privacy and security of criminal history information. The program also addresses related issues associated with privacy policy, data security, and overall information management policy. A component of the program has also been directed to projects addressing the criminal impact of data automation—most specifically, computer crime.

Fiscal year 1980—actual expenditures of $1.3 million.—This expenditure level includes approximately $600,000 for projects relating directly to privacy, security, and confidentiality of data; $400,000 for a project providing technical assistance in computer crime detection; and $300,000 for projects relating to other statistical implications of computer crime.

Fiscal year 1981—projected expenditures of $500,000.—This level of expenditure is necessary to complete in a useful and responsible manner our current efforts with State and local governments relating to privacy, security, and confidentiality, but would be dependnet on receipt of the $5.3 million supplemental.

Fiscal year 1982—projected expenditures of $325,000.—Programs to undertake "examination of issues touching on the privacy and security of criminal history information" have been identified as being terminated at the fiscal year 1982 proposed budget level of $15.7 million, as have programs associated with white-collar crime and computer associated crimes. A modest program is contemplated which would continue to examine those issues of confidentiality that relate directly to the national statistical series and State statistical efforts which are the core of the program of the Bureau of Justice Statistics.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. All right, the other questions will be submitted for the record.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Juvenile Justice

You stated that up to 500,000 children are held in jails. For what kinds of offenses are these children locked-up?

First, for the purpose of clarification, it was stated that estimates exist which vary from several hundred thousand children, to up to 500,000 juveniles who are locked up in jails each year.

The 1980 amendments to the JJDP Act require the Administrator of OJJDP, within 18 months of the date of enactment, to submit a report to the Congress relating to the cost and implications of the new jail removal requirement. The report will provide current information on the number jailed, an estimate of costs to the states, the experience of states currently requiring removal of juveniles from jails and lockups, possible adverse ramifications of removal, and recommendations for legislative or administrative action.

A report by the Children's Defense Fund, after on-site visiting of 450 jails, determined that the overwhelming majority of children found in jail were not detained for violent crimes and could not be considered a threat to themselves or the community. Only 11.7 percent were charged with serious offenses against persons. The rest, 88.3 percent, were charged with minor or property offenses. What is most alarming is that 17.9 percent of jailed children they found had committed "status offenses." An additional 4.3 percent of the jailed children had committed no offense at all.

According to the Bureau of Census 1979 Children in Custody Report, 14.6 percent of the juveniles detained on a single day in public and private juvenile custody facilities are either status offenders, dependent/neglected/abused, or non-offenders. Also, 27.3 percent of all juveniles committed to juvenile custody facilities are non-delinquent youth.

When we talk about status offenders, what do you mean?

A status offense is any offense by a juvenile that would not be a crime if commited by an adult and which is specifically applicable to a person because of their legal status as a juvenile. Thus, a status offender is any juvenile who is adjudicated to have committed an act that would not be a crime if committed by an adult. Examples include truancy, incorrigibility, drinking under age of 18, and being beyond parental control.

Shortly after the JJDP Act of 1974 was enacted into law, OJJDP asked the Council of State Governments to provide assistance in developing an operational definition of a status offender which state and local governments could use to determine compliance with the Act. The results of that work (Status Offenders: A Working Definition) have been used by OJJDP for compliance purposes.

What are the costs of incarceration versus alternatives, such as restitution and deinstitutionalization?

The average costs for various forms of juvenile care or custody (in 1977 dollars) per day are:

probation/parole	$2.00
foster care	10.00
home detention	14.00
day care	15.00
small group home	18.00
halfway house	19.00
large group home	23.00
jail	24.00
forestry camp	28.00
shelter care	34.00
secure detention	61.00
secure correctional institution (males)	68.00
secure correctional institution (females)	118.00

Cost estimates for restitution programs are not presently available. We have underway a national evaluation of OJDDP's restitution program, which includes a cost analysis. As soon as the results are available we will provide them to the Subcommittee.

LEAA was the original block grant program. Based on the experience with the LEAA block program what evidence do you have that states and localities will indeed pick up these costs? What kinds of activities are the states picking up?

The Advisory Commission on Intergovernmental Relations 1977 Report "SAFE STREETS RECONSIDERED: THE BLOCK GRANT EXPERIENCE 1968-1975 - The Intergovernmental Grant System: An Assessment and Proposed Policies" stated that: "The mean assumption rate of projects initiated with Safe Streets funds was quite high. Eighty-three percent of the City projects and 78 percent of the country were reported as continuing with local government support."

On February 2, 1977, a report was submitted to the House Appropriations Committee by its investigative staff. The report states that: "it appears that the percentage of projects which are continued by states and units of local government when Federal funding ceases ranges from 58 to 95 percent."

The LEAA Eleventh Annual Report which was submitted to the President and the Congress of the United States on March 26, 1980 states in Section 519(8) State Project Continuations that "a total of 6,488 projects ended in FY 1979. Of the number, 2,505 (39 percent) were continued with state, local, or other source funds, and 3,983 projects were discontinued because of nonavailability of funds (301 projects, 8 percent); lack of appreciable impact (71 projects, 2 percent); or ineligibility for continuation (3,611 projects, 91 percent).

Prevention had the highest continuation rate (70 percent of all projects for which LEAA funding was terminated), followed by corrections (48 percent), adjudication (46 percent), system support (34 percent), and enforcement (27 percent). Over half of the juvenile justice and drug abuse projects were continued (64 percent and 59 percent, respectively).

Some 1,607 (64 percent) of projects continued with non-LEAA monies were funded at the local level, 558 (22 percent) funded at the state level, and 340 (14 percent) by other Federal or non-government sources.

Of a total of 558 projects funded at the state level, 40 percent were in the corrections category, 29 percent in adjudication, 13 percent in enforcement, 10 percent in system support, and 7 percent in prevention.

There were 1,607 projects funded at the local level with the following percentages in each program component: enforcement, 46 perent; adjudication, 20 percent; prevention, 19 percent; corrections, 11 percent; and system support, 4 percent.

Are you aware of any additional funds being proposed for block grant programs?

It is our understanding that various block grant programs are being proposed in other Federal agencies.

How many states are now in full compliance with the objectives of the Act? In substantial compliance? In non-compliance?

Section 223(a)(14) requires states to provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of subparagraphs (12)(A) and (13) are met, and for annual reporting of the results of such monitoring to the Administrator. December 31st of each year has been established as the date for submitting the annual monitoring report. Although all of the 1980 reports have not been received and reviewed, it appears that approximately 32 to 35 states will demonstrate full compliance, with 15 to 18 states achieving substantial compliance or making progress toward compliance.

Based upon data obained from the 1979 State Monitoring Reports, the following compliance data are available.

All of the fifty states and territories currently participating in the program have demonstrated some progress toward deinstitutionalization compliance, with 41 of them demonstrating substantial compliance (e.g. a 75 percent reduction in the number of status offenders and non-offenders held in juvenile detention or correctional facilities). If the program were to be funded in FY 1982 the 36 states which have continually participated since 1975 would be required to achieve full compliance in 1981 to maintain eligibility for funding.

There are 16 states reporting compliance with Section 223(a)(13) of the Act regarding separation of juveniles and adults. Twenty-five other states reported progress in the area of separation, while five reflect no progress. OJJDP could not determine that progress was made in four states due to lack of sufficient information or the unavailability of data. This should be rectified upon receipt and review of the 1980 report or upon receipt of clarifying information.

Would it not be a better Federal policy to continue to assist those states that are not in compliance rather than just forget about them?

Currently, the Juvenile Justice Legislation 223(d) provides that the OJJDP Administrator shall endeavor to make non-participating states'

allocation of formula funds available to local public and private non-profit agencies in those states for use in accomplishing deinstitutionalization, separation, or jail removal. Any remaining unobligated formula grant funds must then be made available on an equitable basis to participating states that have achieved full compliance with the deinstitutionalization and separation requirements. Both non-participating states and states in non-compliance are eligible to compete for all OJJDP Special Emphasis discretionary funds and all states receive technical assistance support. In 1979 and 1980 over 500 instances of technical assistance were provided to all states covering restitution, diversion, delinquency prevention, the reduction of school violence, and the treatment of the serious juvenile offender. In addition, OJJDP staff organized and conducted training and workshops for local, public and private agencies and citizen volunteers. OJJDP also assures that all non-participating and non-compliant states are involved in or invited to all planned meetings, conferences, and workshops with states participating in the OJJDP Act.

For future Federal policy purposes, both non-compliant states and those at the 75 percent statutory compliance level required for 1980 must determine their own priorities as those priorities fit into the proposed Social Services block grant.

What level of resources would be required to aid these states to reach compliance?

1982 is a critical year for the states and OJJDP as 46 states and territories are due for 100 percent compliance with deinstitutionalization and twenty-six of the states must be in compliance with Jail Separation. In addition states must address the new amendments of jail removal for juveniles and the increased concern in preventing serious juvenile crime. Such changes require continued support, and once a state is in compliance there is an on-going cost to maintain this compliance and to continue progress toward additional needed changes.

Although we cannot place a specific cost figure on a state-by-state basis, our analysis of the past use of juvenile justice funds has indicated that funds are being directed at the specific mandates of the Act and all states have indicated a need for additional funding.

On page 13 of your January justification you note that prevention projects completed their third year of funding during 1980, and that 20,000 children participated in various activities. Have evaluations been completed?

The projects funded under the Programs to Prevent Juvenile Delinquency Guideline are being evaluated by the National Council on Crime and Delinquency (NCCD) under a grant from NIJJDP. NCCD's research efforts began in November, 1976 with the development and field testing of national data collection instruments. The evaluation design includes assessment of program impact and documentation of processes leading to successful expansion of services to youth residing in impoverished communities.

Three specific project sites, Boston, Tuskegee and Seattle were selected for an in depth analysis of impact on juvenile delinquency. The evaluation report on these sites is due in the summer of 1981.

A draft final report covering the process evaluation has been submitted by NCCD. The final report is expected by August 1981.

What benefit did these children receive from these activities?

Over 20,000 youth participated in a wide range of program activities offered within four basic program strategies: recreation; employment/vocational training; education; and counseling/therapy. Examples of some of the benefits received by the participants are described below:

1. Sixty-eight percent of the youth participants who were not attending school full-time received employment services (training, referral, and placements).

2. In the age range 15 or older, 61 percent of all unemployed youth received employment services.

3. Projects implemented in rural locations provided basic recreational services which were virtually non-existent prior to the prevention program.

4. Youths received leadership training through experience as Advisory Board members and as members of planning teams.

5. Many projects offered services in areas such as tutoring, remedial educational services, and support for youth at risk of dropping out of school.

6. Organized adult supervised youth activities, such as Scouting, were initiated in disadvantaged, high-risk neighborhoods where such programs had not existed before.

7. Adolescent parents were provided counseling, preventative education, prenatal and early childhood development training.

8. Twenty-three percent of all participants received over six counseling sessions per month. Counseling focused on family, drug, alcohol and psychological problems.

9. At one project site, low income youth ages 16-19 were provided with full-time employment experience through working on community betterment projects such as home repair, community clean-up and construction of play facilities for children.

The number of children receiving benefits under each service type are indicated on the following chart.

Total Direct Service Types Provided

Service Type	Total Services Provided	Percent of Services Provided	Percent of Youth*
Employment	2,636	11.6	22.5
Education	4,715	20.7	40.3
Vocational Training	1,128	5.0	9.6
Transportation	1,648	7.2	14.4
Lodging	31	0.1	0.3
Financial	670	2.9	5.7
Family Counseling	832	3.7	7.1
Psychological Counseling-Therapy	1,978	8.7	16.9
Drug Therapy	309	1.4	2.6
Alcohol Therapy	67	0.3	0.6
Medical	249	1.1	2.1
Legal	51	0.2	0.4
Religious	35	0.2	0.3
Recreational	8,397	36.9	71.8
Total Responses	22,746	100.0	194.5

*Percent of youth served exceeds 100.0 percent since individual youths could receive more than one service. Percents actually represent rate of services per person.

What impact did the program have on delinquency prevention?

The third phase of the evaluation is aimed at developing policy-relevant information about the impact of community development, network building and direct service activities on delinquency prevention. It consists of a highly focused study of three projects (Tuskegee, Alabama, Seattle, Washington; and Boston, Massachusetts), which will not be available until summer of 1981.

Preliminary analyses indicate that the projects in this program placed primary emphasis on provision of direct services. Accordingly, most of the networking and community development activities were aimed at making direct service programs more responsive to nonconforming youth. The programs served many young people (89 percent) who had previously not been involved with these traditional agencies. Many projects expanded their services to communities where there were few or no youth programs. Furthermore, approximately 23 percent of the youth were employed by the projects themselves. An important impact of this program was to help traditional youth service agencies to understand the concept of delinquency prevention, to include this focus in their service programs, and to extend services to youth who normally do not participate in structured programs. One of the underlying assumptions was that if youth are involved in meaningful activities, they will have less time to engage in delinquent activities, and will begin to identify with more positive roles.

With the elimination of the Juvenile Justice Program funding, how will you administer those continuing functions mandated by the Act such as the Federal Coordinating Council and the Advisory Committee?

The Department is currently reviewing the status of all existing advisory bodies associated with OJJDP and other units of the Department to determine, among other things, their roles and relevance in light of current and anticipated funding levels. For the remainder of the current fiscal year we will concentrate our efforts in a selected number of priority areas where Federal leadership is clearly appropriate. Increasing reliance on internal staff resources (as opposed to contract support) will help ensure that these coordinating and advisory functions are discharged in the most cost-effective manner possible. As one specific example of a more limited role for the Federal Coordinating Council, the Attorney General may focus attention on the policies and procedures of those Federal agencies which have custodial responsibility for many detained youth, e.g., the Immigration and Naturalization Service, the U.S. Marshals Service, and the Bureau of Indian Affairs.

Do you anticipate a legislative proposal to eliminate these functions or will they remain on the statute books and simply be ignored?

If there is no funding for the program in FY 1982, we would be required to consider amendments which would, among other things;

(1) Suspend the Section 204(b)(5) annual report;

(2) Substantially restrict or suspend the functioning of the Coordinating Council and the National Advisory Council;

(3) Release the States from their statutory obligations to deinstitutionalize status offenders and separate juveniles from adults in institutions.

Juvenile Justice Research and Training

Will elimination of OJJDP mean the elimination of all related research and training programs?

In addition to research and training programs the National Institute of Juvenile Justice and Delinquency Prevention (NIJJDP) has also been responsible for the development of programs for the prevention and treatment of juvenile delinquency, as well as standards development and clearinghouse activities.

Given the major role of NIJJDP, the National Institute of Justice (NIJ) has limited its activities in this area to long-term basic research into the causes and juvenile delinquency. With elimination of OJJDP programs, the NIJ will assume greater responsibility for applied juvenile justice system research.

The NIJ 1982 budget request, however, is not sufficient to support the training and program development activities previously funded by NIJJDP.

What are the objectives of these training programs?

The goals of the NIJJDP training programs are to support training which:

- is responsive to the mandates of the JJDP Act;
- provides leadership to state and local efforts by supporting programs best carried out at the national level;
- is cost effective and avoids duplication of existing quality programs and the related development costs;
- focuses on decision-makers, providing information, knowledge and skills gained through related research, evaluation and program development activities;
- improves the accountability, and therefore, the credibility of juvenile justice programs through improved management skills; and,
- supports the specific priorities of the Office.

The Law Related Education (LRE) program is a classic example of a specific legislative training mandate. It also exemplifies a major effort best conducted at the national level. This innovative approach to citizenship training is a significant departure from the classical "civics" curriculum. Using the resources of several respected national organizations and a supporting network of training programs, LRE has sustained tremendous growth and acceptance at the local level.

The training of judges and court-related personnel at the National College of Juvenile Justice at the University of Nevada, Reno also exemplifies many of the goals listed above. Judges are a key group of decisionmakers that should have direct access to both legal and programmatic training resources. Court-related personnel are trained in both basic and advanced management skills to improve both court and program operations.

Senior managers in community corrections, institutional, and probation and aftercare programs have been provided training at both the Wharton School of Business (University of Pennsylvania) and the School of Public Administration at the University of Southern California. These programs have received outstanding evaluations and have had demonstrable impact. Both programs were funded in conjunction with the National Institute of Corrections which had long term experience in this area. Development costs were, therefore, negligible with over 95 percent of the funds going directly into training activities.

The number of projects not continued with non-LEAA funds when LEAA funding terminated were reported in three categories—those discontinued because of no appreciable impact (2 percent), those discontinued because funds were not avaliable (8 percent), and those not eli-eligible (90 percent). The breakout by criminal justice system component of the three categories of discontinued projects is as follows: corrections, 13 percent; prevention, 5 percent; enforcement, 59 percent; adjudication, 17 percent; and system support, 7 percent.

There are many LEAA-funded projects that by their very nature are not eligible nor intended to be continued. Some 56 percent of the total projects ending in FY 1979 fall within this category. These include telecommunications and data processing, equipment purchases, training, facilities construction and renovation, most research undertakings, and experimental projects or studies of a relatively short duration. The major objectives of these projects were accomplished with Federal funds; and with the exception of routine maintenance costs, the bulk of the project cost occurred during the initial federal funding period.

Overhead

The revised 1982 budget envisions a centralization of support services functions for BJS, NIJ and OJJDP. What functions will be provided on the centralized basis?

In keeping with the principles of economy of scale and efficiency through standardization of support operations, a complete array of support services will be provided for BJS, NIJ, and PSOB. This will include all the various aspects of personnel management, and labor relations services. The latter is particularly important since JSIA agencies employees are represented by an Americal Federation of State County and Municipal Employees (AFSCME) local, and our contract is due to be renewed during FY 1982. In the financial area, budgeting, accounting and the financial aspects of grants and contract administration will be provided by a centralized unit. General administrative management services and planning and management information systems support also will be provided by centralized units. Additionally, public and legislative affairs, legal counsel and civil rights compliance operations must be maintained and operated in support of NIJ, BJS, and PSOB.

How many positions are devoted to each of these functions?

At the present time it is extremely difficult to determine exactly how many positions will be devoted to each of these functions. Of the 125 positions authorized in the budget for OJARS/LEAA/OJJDP, five will be allocated to the operation of the PSOB program. Various workload projections are being made on the basis of past experience in an attempt to determine approximately how many of the remaining 120 positions will allocated to support service functions and how many will have to be allocated to phase out operations of the LEAA and Juvenile Justice programs.

The audit function is being transferred to the Department. Given the relatively small size of the overall OJARS operation, could not some of these types of functions be performed at the Departmental level thus permitting more staff to be devoted to program functions?

Transfer of responsibility for support services to DOJ is a facile solution to a complex problem. DOJ support services are already stretched to the limit. It simply could not take on all of OJARS support functions without commensurate increase in personnel.

Research and Statistics

On page 7 of your January justification, you state that the National Institute of Justice is the only organization performing research in criminal justice programs of benefit to state and local agencies. What is the mission of the National Institute of Corrections? How do you interface with them?

Research on the nature of crime and methods for improving the response of the criminal justice system is supported by a number of Federal agencies, including NIJ/OJARS, NIC, Office for Improvements in the Administration of Justice, National Science Foundation, and National Institute of Mental Health. However, given the size and scope of the problem of crime in America and the legislative mandates of the specific agencies there is little overlap in the respective programs. For example, OIAJ specifically directs its attention to problems of the Federal justice system, NSF aims at broad fundamental questions of the relationships of law and social policy, and NIMH is interested in basic relationships between crime and the influence on crime causation of such factors as alcoholism, drugs and mental health. Given the limited resources of the specific agencies and their mutual interests, there is a high degree of coordination. This is achieved through exchange of program plans and research agendas, participation on selection panels and project advisory boards and joint funding of program of mutual interest (e.g., NIJ/OIAJ support for dispute resolution centers and NIJ/NIMH support of drug and alcohol treatment research).

The degree to which cooperation is effectuated is most evident in the relationship between NIJ and NIC. The National Institute of Corrections was created through a joint funding effort of LEAA and the Federal Prison System in 1972. In 1974 it was formally established by Congress to undertake five legislatively-mandated activities: training, research and evaluation, technical assistance, policy formulation and implementation, and clearinghouse. Given the mutual interests of NIJ in these areas, both agencies undertook to explicitly delineate their objectives in 1978, following NIC's first Congressional appropriation for FY 1977.

A "Memorandum of Understanding" was prepared and agreed to by both agencies. This memorandum discusses the specific legislative mandates of both agencies and establishes how these mandates will both be fulfilled in a manner that will maximize available resources and ensure effective coordination of activities. Broadly stated the NIJ research focuses on "system-wide correctional issues with implications for long range impact." The emphasis is on "more fundamental research designed to generate new knowledge and support major inovations in corrections." In contrast, NIC focuses on "improving and upgrading the administration of corrections at the Federal, state and local levels. Specific attention will be given to the problems of operational agencies and to research which can have an immediate or short-range impact on those problems."

Since 1978 both agencies have actively undertaken to fulfill the spirit and intent of this "Memorandum of Understanding." For example:

- The Directors of NIC and NIJ attend all Advisory Board meetings of the respective agencies

- Key staff participate in both public and internal planning meetings, in addition to reviewing and commenting on agency program plans and specific research plans
- Key staff participate in application review processes and sit on research project advisory boards
- NIC provides a direct financial contribution to the NIJ National Criminal Justice Reference Service (NCJRS) and the two agencies undertake joint funding of appropriate research topics
- NIC and NIJ will jointly sponsor during FY 1981 a National Reaction Panel on the findings and policy impact of the NIJ Survey of American Prisons and Jails.

Through these and other efforts the National Institute of Justice and National Institute of Corrections ensure that the Federal research dollar is spent efficiently and effectively.

Death Benefits

The Public Safety Officers' Benefits program is fully funded ($12.5 million) in this budget. How large a staff does it take to operate this program?

The Public Safety Officers' Benefits Program (PSOB) has a core staff of five, three professional and two support. In addition, the following professional staff provide essential technical services:

Staff	Services
Armed Forces Institute of Pathology	Medical analyses
Office of General Counsel (OJARS)	Legal analyses
Drug Enforcement Administration	Forensic science analyses
Comptroller (OJARS)	Budget and accounting services
Hearing Officers (20 volunteers)	Appeal hearings

What is the current status of cases?

Through February 1981, PSOB has approved 946 claims and denied 371. Payments have amounted to $47.3 million, an average annual expenditure of approximately $12.5 million.

How long, on the average, does it take to process a claim?

Once requisite documents are received and certified, a case is processed through analyses, approval and payment in an average of three weeks.

Will the cuts in the general support staff of OJARS affect the processing of the claims?

Every effort will be made to continue the speedy processing of claims. Delays may occur if support services from General Counsel or the Comptroller are reduced.

Juvenile Justice/Violent Crime

There is increased interest in a Federal response to violent crime. How does the juvenile justice program respond to this problem?

The primary focus of the Juvenile Justice and Delinquency Prevention Act has been on deinstitutionalization of status offenders and nonoffenders from secure detention and the separation of juveniles from adults in correctional institutions and facilities. While it is arguable whether the early focus of the Act on deinstitutionalization, separation, and the diversion of status offenders and nonoffenders from the system is preventive of later serious or violent criminal activity on the part of these juveniles, this program thrust is not the type generally associated with a direct violent crime effort. A further amendment requiring removal of all juveniles from adult jails and lockups (except juveniles under criminal court jurisdiction) was added to the Act in December of 1980.

These statutory thrusts, clearly requiring changes in how the justice system deals with problem youth, were the result of three factors: first, the processing, adjudication, and disposition of noncriminal juveniles has historically required an inordinate share of scarce juvenile justice system resources, with the result that the system has been unable to effectively perform its functions; second, research studies have shown that penetration of noncriminal juveniles into the formal justice system process is counterproductive in terms of prevention of future criminal conduct; and third, evolving legal principles of due process and equal protection have led to the conclusion that it is inappropriate to treat juveniles in the juvenile justice system in the same manner as adult criminal offenders.

OJJDP has recognized the need to increase programming efforts in the area of serious, violent, and chronic repeat juvenile offenders. Recent statistics indicate that 20 percent of all violent crime (murder, rape, robbery, and assault) is committed by juveniles, a disproportionate share relative to the general population. If arson is included in the definition of violent crime, the figure increase to 25 percent. In the 1980 Juvenile Justice Act reauthorization, Congress recognized this development by adding additional language in the legislation to encourage the development and funding of programs to address the problem of serious, violent, and chronic repeat juvenile offenders. As a result of this statutory emphasis, coupled with the substantial progress states have already made in achieving deinstitutionalization, separation, and jail removal, OJJDP anticipates that some additional funds could have been allocated to these areas. The direct allocation of FY 1981 OJJDP resources to focus on the problem of serious and violent offenders totals approximately 15 percent of available resources, or $15 million. In any future federal or state efforts, other program categories should be linked in ways shown to have an indirect impact on serious and violent juvenile crime and the juveniles who commit those crimes. These categories would include development of community-based alternatives, diversion, prevention, alternative education, etc.

State and Local Training

LEAA funds have supported state and local officers' training in the past. What is your estimate of state and local governments' ability to continue training of its law enforcement personnel now that your funds are no longer available?

State and local governments are experiencing pressures to reduce their costs similar to those that are affecting the Federal Government. The ability to continue all worthwhile training programs will be severely strained, although the basic training programs that have been supported without LEAA funds will probably be continued. Training that depended upon LEAA block and discretionary grants, will be eliminated or severely curtailed. Since recent LEAA funds have supported the development and have provided the start-up funds for a number of state and regional academies, the curtailments may include these training programs. Where the annual costs have been completely absorbed by state and local jurisdictions, continuance is probable. The picture varies by jurisdiction and by subject area. Specialized training programs will be the first eliminated.

How much money did state and local governments spend on training last year?

Based upon the known law enforcement training budgets of the states, the aggregate training budget and direction expenditures for training are $53,000,000. The budget estimate excludes trainee salaries and other costs not normally found in the budget for training. In addition, some training, such as that for individual judges to attend seminars, may not be shown in the training budgets.

How many of the various training centers set up by LEAA in the past will survive without federal funds?

The training programs are grouped by subject area below;

Criminal Justice Management Training

Five regional centers were established at universities by LEAA to provide training in the management skills of planning, new program development, crime analysis and evaluation to all types of law enforcement supervisory personnel to state and local agencies in their area:

a. Northeastern University, Boston. Continuing for one year under partial support by University to test viability.

b. University of Wisconsin-Milwaukee. Continuing for State of Wisconsin participants but doubtful for other participating states.

c. Florida State University, Tallahassee. Continuing under Florida sponsorship with permission to provide contract services to other states in region.

d. Washburn University, Topeka. Ending by 1982.

e. University of Southern California. Continuation with university support, but doubtful after 1982.

Organized Crime

1. Institute in Organized Crime, University of Notre Dame. Trained investigators and prosecutors. Ended.

2. Organized Crime Courses for Prosecuting Attorneys, National College of District Attorneys, University of Houston. Ended.

3. National Center on White Collar Crime, Battelle Institute, Seattle, Washington. Ended.

4. Dade County, Florida Institute on Organized Crime. Was a national effort. Recently, sponsorship was assumed by the State, but only for Florida investigators and attorneys. Partial continuation.

Police and Sheriff

1. National Sheriffs Institute, National Sheriffs Association. Trains newly elected sheriffs. Continuing with charges to trainees' counties.

2. Police Executive Institute, Policy Foundation. Regional. Continuation planned with support by Foundation and attendee agencies.

3. Police Labor Relations Training, International Association of Chiefs of Police (IACP). Regional. Continuation planned by IACP with support by trainee agencies.

4. Law Enforcement and Older Persons, National Association of Retired Persons, regional sites. Ended. Program materials distributed to be included in basic academy training by agencies.

5. Explosives Detection Canine Training Program, Lackland AFB. Trains dogs and handlers in 30 major airports to search out explosives. Ending May 22.

6. Police Advanced Management Development Program, Police Executive Research Forum, Harvard. Ended.

7. Managing Criminal Investigations Training, regional locations. Trained chiefs of detectives. Ended.

8. Citizens Security Training Programs, U.S. Secret Service. Trained local police protection of VIPs. Ended.

9. Firearms Investigation Program, ATF (U.S. Treasury). Trains local police specialists in examiniation and tracing. Ending.

10. FBI Special Operations and Research Program, Quantico. Hostage negotiation and counter-terrorism. Ending 10/15/81.

11. Bomb Scene Investigation Training, FBI, Quantico and regional. Ending 9/30/81.

Community Crime Prevention

National Center for Community Crime Prevention Training, Norfolk State University, Virginia. Trains citizen leaders to organize and manage crime prevention programs. Ending April 1982.

Arson Control

1. Arson Investigation, three programs to train investigators:

   a. FBI. Ending.
   b. ATF. Probably ending
   c. U.S. Fire Administration. Probably ending.

2. Arson Prosecution, National College of District Attorneys, University of Houston. Ending.

Corrections

1. National TASC Training Center, Cincinnati, Ohio. Trains supervisors of Treatment Alternative to Street Crime (TASC) projects. Ending May 1981.

2. Institutional and field services officer training has been funded in many states from a combination of LEAA block grants and state and local funds. Entry-level training for uniformed guards will continue, but most other programs, such as probation officers, youth services, and drug treatment officers, will end. The most hurt and without hope of continuation will be rural jail personnel and in-service career development training programs.

Courts

1. American Academy of Judicial Administration, Washington, D.C., and regional. Unlikely to survive, but will attempt to continue with trainee funding.

2. National Judicial college, Reno, Nevada. Trains new judges. Continuing with trainees' jurisdictions and Fleischman Foundation support.

3. Institute for Judicial Administration, New York City. Trains appellate judges. Continuing.

4. Institute for Court Management, Denver. Trains court administrators. Continuing at severely reduced level with attendee funding.

5. Appellate Judges Seminar, ABA, Chicago. Unlikely to continue.

6. Specialized workshops by several court-related associations. For judges and administrators on subjects, such as Juror Usage Management and Court Delay Reduction. Ending.

Prosecution

National College of District Attorneys, University of Houston. The college is the only instituion that addresses the training of District Attorneys. Unlikely to continue.

Defense

National College for Criminal Defense, University of Houston. Trains supervisory public defenders. Ending probable.

Native American

Indian Court Judges Training, National Judicial College. Trains new judges and provides refresher training. Ending.

Minority Training and Education

1. State University of New York at Albany. Provides graduate fellowships in criminal justice for minority students. Ending September 1981.

2. Atlanta University Criminal Justice Institute. Provides graduate education in criminal justice for black students. Ending January 1982.

3. Grambling State University, Grambling, Louisiana. Provides baccalaureate program in criminal justice. Ending April 1981.

4. Talladega College, Alabama. Provides baccalaureate program in criminal justice. Ending August 1981.

Is there going to be a continuing effort to evaluate the training needs of state and local governments?

There is no current national effort nor any plans to begin one.

The National Manpower Survey, which contained an assessment of training needs, was mandated by the Omnibus Crime Control Act of 1973 and was based upon data of 1974-75. It has not been updated.

Those states which have training standards or training directorates may be expected to continue to assess the needs for training; however, many will not sustain this effort in the face of competing budget demands.

Civil Rights

LEAA has carried out a relatively vigorous civil rights enforcement program. Although there are no new LEAA funds there are still programs operating with LEAA funds. What is the status of the civil rights compliance program?

The Office of Civil Rights Compliance (OCRC) exists as a viable entity within the Office of Justice Assistance, Research, and Statistics (OJARS). OCRC is responsible for assuring that recipients of funds from OJARS, LEAA, BJS, NIJ and OJJDP do not discriminate on the basis of race, color, national origin, sex, religion or handicap.

As of February 28, 1981, OCRC had docketed 1,073 complaints of which 114 are unresolved.

During FY 1979 and FY 1980 OCRC conducted approximately 240 pre-award reviews of grant applications in excess of $500,000 and 9 post-

award compliance reviews of major criminal justice agencies. Depending on available resources OCRC may conduct one or two more on-site reviews before the end of FY 1981. Additionally, OCRC is responsible for monitoring resolution agreements entered into as a result of a complaint investigation or compliance review and special conditions attached to grant awards as a result of a pre-award reviews. Presently, OCRC is monitoring approximately 34 recipients.

Over the years OCRC has, through grants and contracts, provided technical assistance in the area of civil rights to recipients of OJARS, LEAA, BJS, NIJ and OJJDP funds. A limited technical assistance program is ongoing.

What effect does the elimination of LEAA funding have on the civil rights compliance provisions of the Justice System Improvement Act of 1979?

Inasmuch as the JSIA civil rights compliance function is of necessity dependent upon funding, the elimination of LEAA funding sharply narrows the JSIA jurisdiction in the criminal justice system. In addition, the civil rights functions which have been conducted by Criminal Justice Councils (who administer the block grants at the state level) will cease.

Do these provisions apply to the programs of the Bureau of Justice Statistics and the National Institute of Justice?

The Civil Rights Compliance Provisions of the JSIA are applicable to the recipients of funds from the BJS and the NIJ. (42 USC 3789d). These provisions have also been incorporated by reference into the Juvenile Justice Act of 1980, and apply to those programs as well.

How much staff is devoted to the civil rights enforcement effort now? Next year?

There are seventeen full-time staff and one part-time staff currently assigend to the Office of Civil Rights Compliance. In addition, the Acting Director of OJARS has designated a Task Force of eleven volunteers who have been detailed to assist in the completion of complaint investigations.

The number of new complaints docketed each month has dropped to an average of three. It is believed that the current staffing plus the temporary task force will eliminate or sharply reduce the pending cases under review.

Since LEAA funding has been eliminated, it is likely that few new cases will be filed after the end of FY 1981. The projected elimination of funding for juvenile justice programs will further reduce new case filings.

Almost no cases have been filed against contractors or grantees of the National Institute of Justice or the Bureau of Justice Statistics. OJARS will monitor this situation very closely to insure that adequate resources are devoted to this very important area. At some point in FY 1982, the remaining function should be transferred to another entity.

Questions Submitted by Senator DeConcini

Office of Justice Assistance, Research, and Statistics

What was the amount of LEAA crime control grants (excluding juvenile justice) outstanding in the states as of September 30, 1980?

On September 30, 1980 there was a total of $443,454,000, in LEAA funds outstanding at the state and local level.

How much of the LEAA grants are expected to revert to the Department during FY 1981?

A marginal amount of categorical grant funds will revert to the Department. An actual estimate cannot be given at this time. Block funds will be used by the states to administer the phase-out of the program at state levels.

What arrangements have been made to monitor the use of the outstanding grants by the states?

In FY 1981 the Department of Justice awarded $8.2 million of reverted block funds to those states who demonstrated a need for funds. States were also authorized to reprogram $12 million for administrative purposes. The Department of Justice is currently conducting a survey of the demonstrated needs of the state Criminal Justice Councils (CJC) to provide fiscal monitoring by the CJCs to ensure the integrity of the outstanding block grant funds in FY 1982. In order to provide fiscal integrity for the $800 million left in the pipeline, LEAA intends to authorize the reprogramming by the CJCs of action funds. There are also approximately $4 million in reverted block funds which the Department of Justice will award to the state CJCs to augument their reprogrammed funds. In addition, several states have or are in the process of appropriating funds to assist in providing an orderly phase-out of the program. The approved reprogramming and award of the $4 million in reverted funds will be closely reviewed by LEA to ensure that only those functions essential to close out the program are funded.

How much in LEAA grants is expected to be outstanding in the states on September 30, 1981?

As of September 30, 1981, approximately $173,000,000 in LEAA funds will be outstanding.

How much in Juvenile Justice grants will be outstanding in the states on September 30, 1981?

About $164,000,000.

What is meant by the phrase "state and local agencies <u>may</u> be able to use Department of Health and Human Services block grant funds" to support activities similar to those funded by the Juvenile Justice formula grants? Does "may" mean that the Department doesn't know if the block grants will permit such activities?

The legislative language of the proposed Department of Health and Human Services block grant program is still in the drafting stage.

Consequently we do not know the precise that language will be contained in the Administration proposal. As reflected in recent congressional testimony by the Attorney General, the primary objectives of the Juvenile Justice Program "can, and should, be met through block grant programs administered by the Department of Health and Human Services and through efforts at the state and local level."

Last year, Congress extended the Juvenile Justice and Delinquency Prevention Program after hearings and debate in both Houses. On what study or other basis did the Reagan Administration decide to eliminate the $135,000,000 requested by President Carter within weeks of taking office?

The decision resulted from the following major considerations:

1. The belief that federal justice subsidies to state and local criminal justice programs should be reduced or eliminated because state and local agencies should be capable of assuming greater responsibility in these areas. The Juvenile Justice program has gone a long way toward achieving its objectives and has amply demonstrated that the goals of the authorizing legislation are attainable. However, we also believe that the burden of funding the various juvenile justice programs should be shifted to the state and local levels where responsibility lies for public safety. Many of the states have institutionalized programs begun with federal funds and we believe that many more will follow because many of the programs have proven successful. We also believe that the objectives of programs such as this should be met through block grant programs administered by the Department of Health and Human Services.

2. The necessity to reduce Federal spending in conjunction with the Presidents' Economic Recovery Plan.

3. A decision by the Administration to minimize the imposition of Federal red tape by utilizing as fully as possible the block grant process.

The supplemental for Research and Statistics has been significantly reduced from the amount proposed by President Carter. What will the $17,034,000 be used for; for instance, we have been contacted by a group called SEARCH, will that organization continue to be funded by OJARS?

The National Institute of Justice (NIJ) and the Bureau of Justice Statistics (BJS) are currently operating under a continuing resolution at a level of $7.5 million each. For NIJ, this level only provides for a small scale research program, and for a very limited program development and field testing and evaluation effort. BJS is limited to maintaining the national victimization survey and providing minimal support for statistical analysis centers in over thirty-five states. The supplemental request provides an additional $11,700,000 for the National Institute of Justice, and an additional $5,334,000 for the Bureau of Justice Statistics.

The supplemental would restore NIJ to a funding level that is approximately 75 percent of the FY 1980 appropriation. Although this is a major reduction in funds, it does represent a funding level that will permit NIJ to continue its core program of research and evaluation, program development, and dissemination. Among the research programs to be supported with the supplemental are: Effective allocation of policy resources; Research on improving street officer effectiveness; Problems of identifying the dangerous defendant and determining the appropriateness of pre-trial detention; and Research on correctional officer stress. Additionally, the Institute will be able to undertake a study of police officer fatalities, based upon data collected through the Public Safety Officers' Benefit Program. Supplemental funds will also enable NIJ to continue the long-term research centers, including the Center on Employment and Crime, and the Center of Violent Crime.

The supplemental funding will enable NIJ to continue operation of the National Criminal Justice Reference Service (NCJRS), the only public clearinghouse of information on crime and the criminal justice system. NCJRS provides information services to more than 53,000 criminal justice practitioners and researchers annually.

With the supplemental, NIJ will fund field tests on differential policy response practices, and court delay reduction through early appointment of defense counsel. A field test provides the practical, on-site application of program strategies which emerge from research and development. NIJ will also be able to restore the Exemplary Projects Program, which identifies and documents state and local programs which have proven their effectiveness in reducing crime or improving the criminal justice system. These proven programs may then be adopted by other states and localities. Finally, the supplemental will enable NIJ to conduct program evaluations of selected state and local criminal justice initiatives which show promise for successful replication.

The $5,334,000 which the supplemental request provides for the Bureau of Justice Statistics would be used to initiate a National Academy of Sciences assessment of the Uniform Crime Reports prior to the transfer of that statistical series from the Federal Bureau of Investigation to BJS; support the on-going reexamination and redesign of the victimization series; sustain the National Prisoner Statistics and related correctional series which BJS took over from the Bureau of Prisons in the early 1970's; maintain support of an over twenty-person analysis unit at the Bureau of the Census; continue programs to acquire judicial statistics at the federal, state and local levels including prosecution and defense data; develop data on federal criminal and civil transactions; and continue support of SEARCH Group, Inc.

SEARCH Group, Inc (SGI) is a consortium of representatives of the Governors of all fifty states which has functioned over the last decade by providing LEAA with technical projects and studies related to the interstate exchange of criminal histories, the use of the computers by state and local criminal justice agencies, security and privacy of records, development of offender-based information and statistics systems, and direct help in the implementation of mangement information systems in law enforcement and other criminal justice agencies.

While BJS under its new statutory mandate will have a diminished role in research and development of automated information systems, it will support SEARCH as a national clearinghouse for providing technical and capacity building assistance to state and local justice systems, with particular emphasis on information systems that feed data directly to such national statistical series as the Uniform Crime Reports and National Prisoner Statistics.

SUBCOMMITTEE RECESS

Senator WEICKER. The subcommittee will recess until Tuesday afternoon at 2 o'clock.

[Whereupon, at 11 a.m., Thursday, March 19, the subcommittee was recessed to reconvene at 2 p.m., Tuesday, March 24.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

TUESDAY, MARCH 24, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 2 p.m., in room S-146, the Capitol, Hon. Lowell P. Weicker, Jr. (chairman) presiding.

Present: Senators Weicker and Rudman.

DEPARTMENT OF JUSTICE

DRUG ENFORCEMENT ADMINISTRATION

STATEMENT OF PETER B. BENSINGER, ADMINISTRATOR

ACCOMPANIED BY:
- DONALD P. QUINN, ASSISTANT ADMINISTRATOR, ADMINISTRATION AND MANAGEMENT
- MARION W. HAMBRICK, ASSISTANT ADMINISTRATOR, ENFORCEMENT
- WILLIAM G. FINK, ASSISTANT ADMINISTRATOR, INTELLIGENCE
- GENE R. HAISLIP, DIRECTOR, COMPLIANCE AND REGULATORY AFFAIRS
- JOHN W. GUNN, JR., DIRECTOR, SCIENCE AND TECHNOLOGY
- MALCOLM E. ARNOLD, CONTROLLER
- CHARLES R. NEILL, DEPUTY ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION
- JOHN R. SHAFFER, DEPUTY DIRECTOR, BUDGET STAFF
- MICHAEL J. ROPER, ASSISTANT DIRECTOR, LAW ENFORCEMENT AND CORRECTIONS PROGRAM GROUP, BUDGET STAFF

PREPARED STATEMENT

Senator WEICKER. The subcommittee will come to order.

Our first request is that of the Drug Enforcement Administration. The amount requested is $228,524,000, a decrease of $250,000 from the 1982 base. It provides 195 fewer positions in fiscal year 1982 than in fiscal year 1981.

Appearing on behalf of this request is Peter Bensinger, Administrator, who is accompanied by Donald Quinn, Assistant Administrator for Administration and Management; Marion Hambrick, Assistant Administrator for Enforcement; William Fink, Assistant Administrator for Intelligence; Gene Haislip, Director of Compliance and Regulatory Affairs; John Gunn, Jr., Director of Science and Technology; Malcolm

Arnold, Controller; Charles R. Neill, Deputy Assistant Attorney General; and Michael Roper, Assistant Director, Budget Staff.

Mr. Bensinger, we will be pleased to hear your statement with regard to this request.

We will receive your statement in its entirety in the record at this point. If you could go ahead, please synopsize as we have a little bit of a problem because we have votes starting at 2:30. There are about four or five of them. So I would like to get as much as we can of interchange prior to the votes.

Mr. BENSINGER. Very good, Mr. Chairman.

[The statement follows:]

STATEMENT OF PETER B. BENSINGER

I am pleased to appear again before this Subcommittee to discuss the Drug Enforcement Administration (DEA) budget, and how it relates to our mission, our accomplishments, and our plans for fiscal year 1982.

This appropriation request for 1982 totals $228,524,000 and 3,897 positions.

The resources will be applied to meet the challenge of containing illicit drug traffic by continuing the reallocation of resources to Federal level priority programs.

Briefly stated, we are requesting program increases including:

- positions to specialize in investigations of the financial aspects of the drug traffic;
- positions for support of foreign cooperative investigative efforts in Europe and the Near East to enhance our efforts against Southwest Asian heroin trafficking; and
- the tools we need to protect our employees and to promote a more efficient working environment:
  - replacement of 277 cars;
  - encryption of our data transmission network since it is vulnerable to interception;
  - expansion of our communications system to more overseas offices;
  - continuation of the project to provide voice privacy on our radio system; and
  - phasing in of an aircraft replacement program.

We are proposing some program reductions: the Compliance and Regulatory program will be reduced by about ten percent, the State and Local Task Forces program will be reduced by 50%, the D.I.U. program will be terminated, and administrative and support activities will be tightened up appreciably.

Changes from 1981:

Transfer to NIDA of funding for the Drug Abuse Warning Network (DAWN) contract.	$-1,081,000
Uncontrollable increases required for on-going programs	14,855,000
Decreases for non-recurring items	-1,199,000
Changes in programs:	

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Domestic Enforcement: Increases of 25 positions and $3,705,000 are for:

- Enhanced investigative activity directed at the financial aspects of drug trafficking (26 agents with financial/accounting backgrounds and $1,565,000).
- Installation of data encryption standard (DES) devices on the entire DEA Automated Teleprocessing System (DATS) ($740,000).
- Purchase of 277 replacement vehicles ($1,400,000).

Foreign Cooperative Investigations: Increases of 10 positions and $1,101,000 are for:

- Enhanced capability to meet the threat posed by heroin trafficking from Southwest Asia, made possible by the addition of 7 agents and 3 intelligence analysts ($651,000), and additional funding for Special Field Intelligence programs (SFIP) ($300,000.)
- Access to the DEA Automated Teleprocessing System (DATS) for 16 DEA overseas offices that do not currently possess DATS capability ($150,000).

Compliance and Regulation: Decreases of 47 positions and $249,000 will result in:

- Reduction in activities which provide useful information, but do not affect the primary mission.
- Reduction in the need for pharmacological expertise and the necessity for economic analysis of regulations.
- Reduction in staffing related to amendments to the Controlled Substances Act (CSA) which will provide for more effective registration procedures.
- Reduction of 100 cyclic investigations identified with registrants who do not present an obvious risk to the public health and welfare.
- Reduction in the frequency of investigations.

We will maintain our planned level of activity in the Targeted Registrant Investigations program aimed at significant diverters of controlled substances at the retail level.

State and Local Training: Decreases of 9 positions and $487,000 will necessitate:

- Reduction of 5 agents and 4 clerical positions attached to the training program. High-impact and multiplier-effect programs such as the Supervisory Training course and the Drug Enforcement Officers Academy,

the graduates of which train narcotic enforcement officers in their own local departments, will continue.

- Reduction of thirty percent in the volume of DEA publications ($140,000). Publications designed to provide factual data on drugs, drug abuse and related programs will continue to be provided to law enforcement, CSA registrants, professionals and the public, but at reduced levels.

State and Local Laboratory Services: Decreases of 5 positions (3 chemists and 2 clerical) and $180,000 will result in:

- Some increases in the backlog of exhibits and in evidence turn-around time, though analysis of State and local drug evidence related to essential and significant cases will be treated expeditiously.
- Reduced levels of support to non-prosecutive programs.

The minimal operational requirements of other Federal agencies will be met and forensic analytical support to the Metropolitan Police Department of Washington, D. C., will continue.

State and Local Task Forces: Decreases of 94 positions (78 agents, 3 professional/technical, 13 clerical) and $2,519,000 will necessitate the termination of seven formal task forces throughout the United States.

DEA will continue the Task Force program in twelve areas within the funding plans of $8.9 million and further will:

- enhance law enforcement liaison at the District Office level,
- place increased emphasis on DEA State and local cooperative investigations, and
- develop intelligence generated from lower-level investigations for use in mid-level and higher-level enforcement efforts.

Diversion Investigation Units: Decreases of 24 positions and $1,404,000 will necessitate the termination of the Diversion Investigative Units program. The DIU program currently has 23 active State-run units. Of these, 11 units are still functioning with Federal funds made available through cooperative agreements during 1978-1981.

The remaining workyears and funding assigned to the 11 Federally-funded DIU's will be phased out and timed with the expiration date of the cooperative agreements. The last cooperative agreement will terminate in September 1982.

We expect the participating States to continue these programs with their own funds.

Intelligence: Decreases of 21 positions (12 intelligence analysts, 5 professional technical, and 4 clerical) and $837,000 will result in the deferral of planned enhancements in intelligence products. These reductions will not affect current level support to the El Paso Intelligence Center (EPIC) or priority areas such as efforts to contain Southwest Asian heroin.

Research and Development: Decreases of 7 positions (6 professional/technical and 1 clerical) and $179,000 will offset increases in higher priority programs. The critical elements of the Research and Development program will be met. Initiation of other projects will be deferred and some current projects will be stretched-out.

DEA Training: Decreases of 3 professional/technical positions and $181,000 reflect the decision to transfer the greater portion of DEA's training program to the Federal Law Enforcement Training Center (FLETC) at Glynco, Georgia.

Technical Operations: Increases of $1,500,000 for:

- Continuation of the voice privacy equipment procurement (Phase II - $1,000,000).
- Establishment of an aircraft replacement program through the purchase of eight single engine aircraft ($500,000) to replace the oldest, least operational aircraft in the fleet.

Program Direction: Decreases of 21 positions (18 professional/technical and 3 clerical) and $520,000 will offset increases in higher priority programs. Major requirements will be fulfilled through a redistribution of workload.

DEA'S MISSION AND PROGRAMS

Ours is an important task. In attempting to bring drug law violators to justice and to immobilize their organizations, we face what often feel like insurmountable odds. The traffickers have money on their side. The enormous profits available—$64 billion dollars at the retail level in 1979 in the United States—makes drug trafficking an attractive venture worth the risks inherent in such an illegal enterprise. I believe the focus of the U. S. Government should be directed toward increasing those risks—changing the odds.

DEA is rightfully at the forefront of the United States' initiatives. However, before I expand on the specific components of our operations, I believe it would be beneficial to quickly survey the dimensions of the drug supply arena.

The dynamics of the world drug market are changing at a pace unparalleled in history. This gives us all cause for concern. One of the most serious

problems is the influx of heroin from Southwest Asia; Afghanistan, Iran and Pakistan. European nations are reeling from its disastrous effects; in the United States the presence of Southwest Asian heroin is being felt in many of our major cities. As you know, the sources of opium for Southwest Asian heroin are not controlled and the outlook is not encouraging. Compounding that problem, is the anticipation of a new bumper crop of opium from the Golden Triangle. After two years, the drought that plagued Southeast Asia is ending. While the estimated domestic supply of heroin has dropped 50 percent since 1975 and continues to decline, despite the increased production from Southwest Asia, the uncertain production from Southeast and Southwest Asia makes future supply levels unpredictable.

The availability of cocaine and marihuana from Latin American and Caribbean source countries will most likely continue in the immediate future. The cocaine traffic in the United States and Europe continues to grow. The marihuana problem is increasing to a significant extent: there is massive cultivation in Colombia and increasing cultivation in Jamaica. Also of growing concern is the domestic cultivation of high THC content marihuana in Hawaii, California, Oregon and in neighboring states.

At the retail level, cocaine is now the single biggest producer of drug revenue. Marihuana is not far behind. The economic and health impacts of these two drugs are being felt nationwide, although most severely in our Southeastern area. It is painful to watch our abuse indicators reflect increased ill effects being experienced by the young people of our country.

Over the past several years, the United States has also experienced gradual increases in amphetamine and methamphetamine abuse. There has been an upsurge in illicit manufacture of these substances even though our special agents are seizing well over 100 clandestine laboratories a year. Our South Central states are most affected.

Additionally, we have also seen the entry and presence of large-scale organized traffickers in the depressant trade. This has become most apparent with respect to methaqualone. The number of illicit methaqualone laboratories seized by the DEA has increased dramatically. Seizures are up: the same number was seized in the first six months last year as all of 1979. There is also considerable evidence of smuggling methaqualone by air and sea into the United States.

In all cases, our objective remains to immobilize the major trafficking organizations that have the capability to affect the national and international

drug abuse situation. Consequently, we sometimes shift our drug enforcement priorities by region and city. Thus, in the Northeast the vast majority of our efforts are directed towards heroin, whereas in Florida and the Southeast, where cocaine and marihuana trafficking are very extensive, we are seeing most of our investigations targeted against major organized criminal networks dealing in these substances. But regardless of whether it is a heroin, dangerous drugs, cocaine or marihuana organization that we target, our objective is to immobilize the organizations by ensuring that the principals are incarcerated, the drugs seized, and their assets removed.

The primary focal point for many of our programs is overseas because, as you know, the primary sources for these illicit substances are in foreign countries. It is imperative that our international program be strong and dynamic Stopping the drugs abroad, before they enter the marketplace, is one hundred-fold more effective than arresting major violators at home. We have been witness to the effectiveness of the commitment of the Government of Mexico and international cooperation and the resulting impact on heroin production from that source.

Unfortunately, we cannot now get to one heroin source where we need to most: Southwest Asia. In deference to our inability to create an impact at source sites in Southwest Asian countries, we have had to move to our second line of defense, the conversion and transshipment countries, which unfortunately have also in many instances become the victim countries. Our European allies are responding most favorably to the initiatives we have developed.

Intensified efforts in Europe and Turkey have had an impact. Fourteen heroin conversion labs have been seized in the past two years; seven of these were in Italy and two in Sicily. The heroin produced in nine of these labs was destined for the United States. Southwest Asian heroin seizures are up 400 percent in Europe and the Middle East.

This rate is actually far more dramatic than the successes realized at the time of dismantling the "French Connection" in the early 1970's. These seizures and the arrests and prosecution of the prinicpals are effective; it is the major reason that heroin purity in the United States has increased only marginally.

Firm commitments are also needed in South America--the source of increasing amounts of cocaine, marihuana and methaqualone. As with heroin, the solution must be found in the source countries. Crop control and substitution programs, in concert with economic development, are critical elements in a viable strategy. Increased diplomatic initiatives directed toward gaining greater

commitment and cooperation from the governments of the production and transshipment countries are also vital to a comprehensive approach.

In the past we have directed our efforts toward traffickers and drugs...no longer. A new major priority is directed not toward the drugs, nor toward the traffickers, but rather toward that third dimension of a drug trafficking organization--the assets. We have accelerated our program to take the profits and proceeds out of drug trafficking.

DEA's program is moving forward at a rapid pace. Without capital, the traffickers are out of business. In the first year of our efforts (FY 1979), while we were training our agents in techniques, we removed approximately $13 million in assets from drug traffickers. In FY 80 there was a 700 percent increase in seizures--up to a total of $90 million in seized assets. During the same period, approximately $42 million has been forfeited and turned over to the United States Treasury.

I have every expectation that this trend will continue. Hitting the traffickers where it hurts--in their wallets--is an effective weapon. Removing the organization's assets removes its lifeblood. Incidentally, I am very pleased to note that the concept of asset removal is being vigorously pursued both by other nations and, in some cases, at the state level here in the United States.

I believe that the overall emphasis of DEA's enforcement program is sound. It is our responsibility to direct all efforts at the upper levels of the drug traffic. And we have made inroads developing conspiracy cases against major traffickers: we can now reach the heads of the criminal organizations who never touch the drugs, but reap all the rewards and the profits. The momentum of the DEA enforcement program is reflected in the FY 80 statistics which show substantial increases in arrests of upper-echelon violators; overall arrests increased by approximately 900.

Our programs have a built-in flexibility to respond to changing situations or to bring special emphasis to bear on a problem. We are exploring many different, innovative enforcement initiatives to insure that maximum pressure is brought to bear on the drug trafficking environment. Many of these initiatives involve enhanced working relationships with other Federal, State and local agencies.

In the last several weeks I have met with FBI Director Webster and IRS Commissioner Egger to discuss the ever apparent need for increased commitments from each of their services to the domestic narcotic control effort. They have

both agreed that continued interagency cooperation is vital and a signal as to the priority of drug law enforcement.

Of course, we are maintaining a strong emphasis on interagency investigations with the Customs Service, the Coast Guard and the rest of the Federal enforcement community. In these austere times, we have all recognized the need for further enhancement of cooperative endeavors. I believe we will be seeing an acceleration in the number of interagency, high-level investigations.

This concludes my statement, Mr. Chairman. I shall be pleased to answer any questions you or other members of the Subcommittee may have.

BUDGET REQUEST

Mr. BENSINGER. As you indicated, it does reflect the request for $228,524,000, including adjustments to the base accounts for a net change of $12,575,000, that is net uncontrollable increases of $13,656,000, offset by a transfer of $1,081,000 associated with DEA's program to measure drug abuse, which is being shifted to the National Institute of Drug Abuse of HHS.

It is a net decrease of $250,000 and 195 positions, and the program increases are $6,306,000 and 36 positions.

The program increases consist of 26 agent accountants for continued emphasis on our financial investigations program, an increase of $1,101,000 and 10 positions to support Southwest Asian heroin investigations, funding of $1,900,000 for aircraft replacement programs, basically to provide for the safety of our agents both on the street, on the road and in the air, and to accelerate implementation of our privacy system, a system that we desperately need to protect again the safety of our investigations, our agents and the intelligence that has been exchanged, right now under basically nonprivate methods.

We will have three-quarters of a million dollars provided to acquire data encryption for our automated teleprocessing system equipment, providing for methods to have access immediately to DEA data base for 16 of our offices overseas. We will be reducing our compliance program positions.

We will redirect the effort in that program activity, which will, we think, enable us to continue to focus on major retail diversion and to do a cyclical auditing of the major manufacturers, pharmaceutical manufacturers, without jeopardizing the availability of legitimately produced pharmaceutical products.

We will not be asking for new diversion investigative units. Every year we have asked for three such new State programs. This is the only program that will be eliminated in its entirety, a total of 24 positions, and $1,404,000.

The drug abuse situation is dynamic. We have seen an influx of Southwest Asian heroin. It has been confined principally to the Northeast and has not spread over the United States.

We do anticipate additional pressure from the "Golden Triangle" in Southeast Asia.

We are looking to Latin America to develop crop destruction and control programs for marihuana in Colombia, and cocaine in Peru, hopefully in Bolivia as well.

CROP ERADICATION OR CONTROL

Senator WEICKER. Where is the crop destruction program?

Mr. BENSINGER. Crop control in South America.

Senator WEICKER. Of marihuana?

Mr. BENSINGER. Marihuana in Colombia, Jamaica, and the Caribbean, and coca and cocaine in Peru, Bolivia, and Colombia.

Senator WEICKER. I read in the newspaper the other day that the largest cash crop in California is marihuana. Why do they have to go to Colombia?

Mr. BENSINGER. We have to do both, Chairman Weicker; 90 percent of the drugs that are distributed in the United States illegally are imported. About 70 percent of the marihuana comes from Colombia, about 10 percent comes from Jamaica, another 7 percent from Mexico, 2 to 3 percent from Thailand and about 7 percent domestically, most of that from Hawaii and California.

The attorney general of California has embarked upon an aggressive program. We have provided aircraft, intelligence, and agents to help in California. The problem is principally in 27 counties in the northern part of California. The crop is being grown illegally. It needs to be dealt with locally, and at the Federal level. We do have a proposal with the Attorney General and the California Bureau of Narcotics to take some of the violators to Federal court because they have been getting slapped on the wrists in California, and are out on probation.

We are seizing the property on which it is grown to try to increase the control, but it is a problem, as you correctly identify, that is in our own backyard and in our own largest single State. It just represents the smallest amount of the total problem to be dealt with; 90 percent of it still comes in from overseas.

I think the problem is one that is going to involve consideration of bail, of sentencing and of seizing the assets of the traffickers as well as just saying to you over a table, you know, we can stop it if we get good crop control, but it is a difficult objective to achieve in any climate, including California.

Senator WEICKER. Go ahead. I am sorry.

Mr. BENSINGER. I am glad you did. It shows some of the difficulties and dimensions we have to deal with.

We have put a lot of emphasis on seizing assets. When I first appeared before this committee, DEA and other Federal agencies did not have forfeited to the United States $1 million from the criminals. It is my personal belief that we ought to look to the criminal element to finance their own demise and to seize the assets of the illegal distributing organizations.

There is a provision in our law that enables DEA to seize assets derived from, and intended to be used in violation of the Controlled Substances Act. We are recommending to the States that they adopt similar provisions. This year we will be seizing perhaps in the neighborhood of $150 to $170 million. Already forfeited was $40 million last

year, and seized about $100 million. This is not just—I am not talking about any of the value of drugs. I am talking about cash, buildings, stocks, bonds, property, assets that traffickers have bought and which we can trace to illegal drug dealers.

We think closer cooperation with the IRS and with Customs will be helpful. I have met with the new Commissioner of IRS in this regard.

Mr. Chairman, our agency is certainly pleased to appear before you and we would be happy to answer any further questions at this time.

ASSET SEIZURE

Senator WEICKER. I will ask a couple of questions and then let Senator Rudman take a chance to speak.

You mentioned in your statement about capital putting traffickers out of business. You cite a 700-percent increase in seized assets, $13 million in 1979 and $90 million in 1980, and yet that is an infinitesimal part of the problem which you estimate is $64 billion in 1979.

Do you really consider that a success?

Mr. BENSINGER. I don't think the record is a complete one. I think that the progress is clear. I think we need treaties with the Bahamas where a lot of that $64 billion is, Senator Weicker. It is not in the United States.

Senator WEICKER. $64 billion?

Mr. BENSINGER. Billion; that is shipped overseas. I think we will need treaties with the Bahamas' authorities, with the Government of Mexico.

TREATIES

Senator WEICKER. Treaties in what sense, as far as the cash is concerned?

Mr. BENSINGER. Yes; there is a Criminal Exchange Treaty which we have signed with Switzerland, which has been very helpful.

Senator WEICKER. You don't think you will get a treaty with a country like that?

Mr. BENSINGER. I don't think we can walk away from the opportunity of getting the United Kingdom and the Bahamian authorities to look at the violence, corruption, and the impact on tourism, that drug traffickers create. They are beginning to have second thoughts. It was interesting to me to have the opportunity to talk with the Mexican Government 5 years ago and to see what they have been able to do in a brief period of time in controlling illicit crops and cracking down on some of their traffickers.

So I would say $64 billion, not all of it in the United States, perhaps 25 to 30 percent remaining here. We expect in 2 years we will be seizing perhaps one-half billion dollars through section 881 of the Controlled Substances Act, and with greater participation by the IRS and Customs, and the FBI that figure can be, we think, significantly enhanced.

I think the money has also got to be tracked once it leaves our shores. There was a clear demonstration of the extent to which the moneys flow through the islands, and it has been reported in the Wall Street Journal, by other intelligence agencies. I think those countries

can take steps to insure that if someone is bringing illegal money into their country, it can be seized.

MARIHUANA

Senator WEICKER. My last question on this round of questioning relates to marihuana. I have always been against its legalization, always been against its decriminalization. However, I must ask the question: What would happen in terms of your resources and your ability to control the narcotics traffic if you let go of the marihuana side and really came down hard on everything else?

Mr. BENSINGER. Most of the manpower of our domestic investigations is directed at heroin and cocaine.

In the Southeastern part of the United States, marihuana would receive perhaps 30 to 40 percent of the man-hours devoted but that wouldn't be the case in most of the Northern States or the Western States. If we were to theorize that marihuana could somehow be sold through drug stores, or say DEA should not concentrate on it, you would have a tremendous black market and you would have people hyping THC content from 1 percent to 7 percent so it resembled hashish. But even if we were directed by the Congress or the executive branch or the Attorney General not to go after marihuana traffickers, I think it would be a mistake to take that position. If we did, we would save some man-hours in investigative time, no question about it. I don't think the health reports that I hear from NIDA, from HHS, indicate that marihuana is harmless. In fact, research studies indicated it has become more clearly documented as a dangerous substance, particularly for adolescents. So my view would be to advise against such a move, but in candor, to tell you that we do spend man-hours on that particular drug and on those traffickers.

It does represent about a $22 billion business. I can't see a savings if it was legalized because legalized to whom, the 21-year-olds and over? And then organized crime groups target in on the 10-year-olds to 20-year-olds. If you said you would make it available to anybody and just do it in a capsule form, then the traffickers would want to get into the 5 percent THC instead of the 1 percent THC.

Senator WEICKER. What is THC?

Mr. BENSINGER. The psychoactive substance, the chemical compound in the marihuana leaf and stem that creates the effect of a high or spacial slowing down, slows your reactions, affects the central nervous system.

Senator WEICKER. Senator Rudman?

LEGISLATIVE BARRIERS TO ENFORCEMENT

Senator RUDMAN. Thank you, Mr. Chairman.

I want to ask you two general questions, one I guess you would have to put in the area of tactics, the other in the area of strategy.

I would like you to tell us what statutory inhibitions there are—with the Comptroller General statutes, the statutes of the IRS and statutes of the custom service—that inhibit your agency from getting the kind of massive cooperation you need to attract the kind of evidence that leads you to these distributions?

Mr. BENSINGER. Two immediately come to mind: First is in the area of cooperation with the IRS. The Tax Reform Act of 1976 has made it a practical operational problem to get clear, continuing and immediate information from the IRS for two reasons: One, there continues on the books a serious felony liability for IRS employees and agents who provide criminal evidence to domestic law enforcement for any purpose which could be construed by some subsequent court or third party to be inappropriate. Second, the administrative procedure which is being used by the IRS for such information to be made available to DEA goes through a series of processes; and Mr. Hambrick can develop this further as the senior criminal investigator in DEA. That requires them to go to the local counsel, the Department of Justice, and IRS's Chief Counsel. We would like for an expression by the Congress to the IRS that information on criminal activity involving drugs is given to DEA as a matter of policy, not that we have to request it.

Senator RUDMAN. Has that request ever been made before?

Mr. BENSINGER. We have requested to our congressional contacts and to, now, the new Attorney General that such a provision in the law be adopted, and we feel it is in order.

I know you and other Senators have supported such a move.

Senator RUDMAN. It seems to me that if we are going to spend our money wisely, that a substantial amount of the hard evidence that leads you to distribution networks, speaking from my own experience, is contained more in financial records of banks, tax returns and security transactions, and in some cases State transactions.

I would like to ask you or your counsel to supply to me the form of legislation you think might be important, because we are running into the Tax Reform Act now in a number of ways.

The Permanent Subcommittee on Investigations chaired by Senator Nunn recently concluded ILA hearings on Corruption on the Waterfront. We heard over and over again from investigators working in that area that, if they had more cooperation from the IRS, which the IRS has not been giving them because of the Tax Reform Act, the job would be easier.

I would also ask you to submit to me any information obtained by the Comptroller of the Currency and other Federal banking authorities that, in some way, the withholding of which inhibits your field investigations.

I also know the flip. side of that coin. That kind of legislation imposes great responsibilities in the hands of those who use it. I think you ought to give some thought to that in any proposals that you might make.

Mr. BENSINGER. I appreciate your comment and we will do that.

[The information follows:]

TAX REFORM ACT

The administration is considering the need for revisions in the Tax Reform Act. Development of an administration policy is now underway.

LEGISLATION NEEDED TO REDUCE DRUG AVAILABILITY

Senator RUDMAN. I have one other question.

The second question is more of a strategic nature and tactical nature. Would you agree with me that to effectively slow the importation of heroin, cocaine, and marihuana into this country by air, sea and land at a level effective to reduce street supplies is, within the parameters of your proposed budget, almost an impossible task?

Mr. BENSINGER. I would think we need legislative change to significantly reduce the availability of drugs in this country in two areas, if I could be specific. One in the area of marihuana, I think a change in the Paraquat amendment of the Foreign Assistance Act is in order. I think consideration of some of the capabilities, not from a direct law enforcement standpoint, but from an intelligence reporting standpoint of the Navy, naval aircraft in the Caribbean, for example, to the Coast Guard from the standpoint of sharing intelligence would be significantly an asset to our effort.

Right now this consideration has been discussed in a number of congressional committees. We talked with the Coast Guard. We feel very strongly that the Coast Guard and the customs service need additional resources to assist in the interdiction effort, but without a program directed at the source, then our domestic budget is really facing a much higher hurdle.

Senator RUDMAN. That is really the thrust of my question because of my own experience trying to shut off the flow of amphetamines, some heroin, and mostly marihuana across the Canadian border it was almost impossible to put out the resources necessary to stop that.

Once it gets in the distribution network, you are essentially making hits here and there and getting a few users, but you are not getting the net.

The strategy I am talking about is what has your Department planned in terms of getting more congressional initiative, through the administration, to essentially go to the source, which is really where this battle is either going to be fought or won? I do not believe, Mr. Bensinger, you can win this battle if we give you $700 million, if you can cut the supplies off. I do believe there may be a way with enough support to win the battle in terms of where the sources are. That is my point.

Mr. BENSINGER. I think your point is a good one, Senator Rudman, and it follows in a way Chairman Weicker's comment about the money. I think just seizing drugs and arresting people doesn't work. Right now we are going to go after the assets and try to focus on the pocketbooks. But the best place to do it is at the source.

In the case of Mexico, this government invested about $100 million over 7 years, the Mexican Government several times that, and they effectively shut down the heroin supply from Mexico and the marihuana supply. It didn't automatically fill in. It took about 4, 4½ years and tremendous political unrest in Iran, Afghanistan, and Pakistan to create a different heroin picture today.

I think we need a change in the laws, I think our agency is prepared to talk to Congress about changing the Tax Reform Act of 1976, and Foreign Assistance Act as far as paraquat.

Senator WEICKER. Changing what?

Mr. BENSINGER. Having an amendment, Senator, that would provide for the Internal Revenue Service, which has the most effective financial analysis in the Government and the closest access and largest resources for the money flow which is in the billions, to have them take a more active continuing role in narcotic investigations.

Mr. Hambrick can describe to you the specific changes we would like in the law.

Senator WEICKER. Mr. Hambrick can describe to me what it is he is thinking about in another session of this committee. I drafted that legislation and as far as I am concerned it was drafted to go ahead and protect taxpayer privacy. Because you fellows, the IRS, the Justice Department, and the FBI cannot work that out administratively doesn't mean we are going to go ahead and change the law.

You have tried this, you people on the floor of the Senate for the last couple of years. You did something around midnight. I have to go out there and protect what it is that we did—the Tax Reform Act of 1976. It took 40 years to get, the first reform of the tax legislation for the protection of the taxpayers. It was obviously done in the face of one hell of a lot of abuse. This chairman is going to put you on notice. You people have some ideas along that line talk to the chairman here before you try your ideas out on the Senate floor, because I couldn't disagree with you more. I think the IRS is not a law enforcement agency. It is a tax-collection agency. It is as simple as that. They are charged with the responsibility of enforcing the revenue laws of this country, period.

Mr. BENSINGER. Chairman Weicker, I understand your position. I respect it. But I also expect as chairman of this Appropriations Committee, you are interested in our views on how we can do our job better. It is my view that some of the largest and most flagrant tax violations in this country are from drug traffickers. It is my view that in some cases the IRS would be well-advised to go after the multimillion-dollar drug dealers.

Senator WEICKER. That is not their charter.

Mr. BENSINGER. Their charter is to enforce the revenue laws.

Senator WEICKER. Tax laws.

Mr. BENSINGER. If they are not reporting on the IRS form, if we get a guy in Hollywood, he has a $350,000 house he paid for in cash that he lists on his tax return, earning $20,000 as a baker, he has got $110,000 in his bedroom and seven mink coats in his wife's closet, I think that is something for the IRS to look at.

Senator WEICKER. There is nothing to prevent the IRS, Justice and everybody else from getting together on these matters, if necessary, going before a court of law, to go ahead and obtain an order to give you access to those returns. I have no problems with any of that.

Mr. BENSINGER. We don't want the returns. I would like to have the IRS agent in the field when he senses he is onto a drug dealer, report that to us. That is all. I don't want to get into somebody's privacy and I respect the work that you have done.

Senator WEICKER. It is a very meaty subject and not one we are going to resolve here at this hearing.

Mr. BENSINGER. Could we subsequently meet with you?

SOURCE COUNTRY EFFECTIVENESS

Senator WEICKER. The answer certainly is you may meet with me and I am most anxious to meet with you.

I am sorry. You were in the middle of explaining something.

Mr. BENSINGER. I am glad we had this interchange.

The other areas, Senator Rudman, with respect to the source, effectiveness depends on the foreign country. Colombia is a major source now for both cocaine and marihuana. It is increasingly concerned about terrorism and the recently expelled Cuban officials.

With respect to that issue, sometimes there is a relationship between terrorism, drug trafficking, guns, and the ability of the country to really maintain effective control over the geography.

We are impressed that there needs to be a change in posture with respect to cultivation of both cocaine and marihuana in several Latin American countries. We think that this Government, through a variety of programs, can assist those governments to do that. It is through budgets not of DEA, but of the State Department, of the Agency for International Development, and it has been effectively implemented in Mexico and in Turkey. Our program would be to call to the attention of the State Department and our Attorney General the opportunity for such initiatives this year.

SOUTHWEST ASIAN HEROIN INTERDICTION

Senator WEICKER. Your justification states that 1,545 kilograms of Southwest Asian heroin was received in 1980. Do you have any estimate of how this relates to the total amount that came into the country?

Mr. BENSINGER. We have an estimate of the total amount that came into the country, about 4 tons. It is an estimate that is based on information from 10 separate agencies. It is a rough estimate. We cannot guarantee that is accurate to the pound or hundreds of pounds. It is the best opinion put together by people who have access to statistics on the number of addicts, the number of people in treatment, overdose deaths, injuries, information from Customs, Coast Guard, CIA, the National Institute of Drug Abuse as well as State and local law enforcement.

It represents a reduction of about 50 percent from the amount that came in in 1976, but it is more than came in last year.

TOTAL DRUG INTERDICTION

Senator WEICKER. Can you estimate what percentage of total illegal drugs DEA was able to interdict?

Mr. BENSINGER. It varies by drug. For cocaine and heroin, the percentage interdicted by basically the Customs Service and in some cases the Coast Guard for marihuana would be 19 percent, for heroin perhaps 6 percent, hashish 14 percent, cocaine 20 percent. This is based on the best estimate of these agencies.

The amount will vary depending on whether the Coast Guard's resources, for example, in the Caribbean, are fully explored, or whether

they are not as well as the amount of information we can collect abroad. The larger the bulk the greater the chance generally for apprehension at sea.

COMPLIANCE PROGRAM REDUCTION

Senator WEICKER. The budget contemplates staffing reductions in the compliance and regulation program, some of which you have stated do not affect the primary mission. However, you also state in the justification that over half of the reduction directly impacts the program's mission. Can you tell us how severe the impact would be and what kind of investigation would be most effective?

Mr. BENSINGER. Yes, I can. I can't predict exactly how severe it will be just because we don't know. What we will have is fewer compliance investigators. These are the GS–1810 classification of the investigators.

In the past, 3 years ago, 85 percent of our some 220 1810's were working on cyclical investigations of major drug manufacturers and distributors. Two years ago we made the decision to spend more of our time on retail diversion. Where, really, the problem is hitting the streets is not from the manufacturer legitimately, but somebody who is a doctor or pharmacist letting them go out. We are saying next year we will spend 50 percent of our time on retail diversion investigations and reduce the number of cyclical investigations by perhaps 100. What impact that has, I don't know. Our experience has been, Senator Weicker, that these legitimate manufacturers and distributors who have to come to us for permits are not responsible for the major diversion. We do go in and inspect. There have been fines paid. Some have been, in fact, removed as manufacturers and distributors. But we have done that on the basis of demonstrated need for further investigation.

If we are right, there will not be a significant fall-off in our diversion effort. If we are wrong, and the manufacturers are responsible for a great deal of diversion, we will have an increase in the size.

Senator WEICKER. You only have a few manufacturers, don't you, in the United States?

Mr. BENSINGER. No; there are probably well over 500 manufacturers. We have about 600,000 registrants. Most of them, 560,000 are doctors and about 50,000 pharmacists. Then we have some wholesale distributors, those are in the thousands and major manufacturers. But those manufacturers are spread out and there are some smaller ones, not just the big names. Gene Haislip is here. You may want to comment further on this.

Senator WEICKER. Let me state that somebody like—doesn't Mallinckrodt?

Mr. BENSINGER. They are a very big manufacturer.

Senator WEICKER. Do they police themselves or do you fellows police them?

Mr. BENSINGER. Both. They police themselves. When they import raw opium we set up with them the procedures, we monitor the shipments, we get copies of any of the scheduled drugs that are shipped from a manufacturer to a wholesale distributor, Penick, Lilly, Mallinckrodt, those large companies, do have responsibility to police themselves. But they could have a warehouseman or someone in back of one of their shipping departments kick out a couple of truckloads of schedule II drugs and that is a major problem. So we have to check.

Senator WEICKER. Of course they could lose their license. It really puts the whole enforcement burden on their shoulders.

Mr. BENSINGER. Right. So we are dealing with an exception basis with the manufacturers and in the past we have been dealing too much on a regulatory basis. Now we would like to step back and where we see indications of potential abuse, send our investigators.

Mr. Haislip, I don't know if the law requires us every 3 years to, or semiannually——

Mr. HAISLIP. Presently the law requires a registration every year.

Mr. Chairman, we are thinking of proposing legislation which might eliminate some of those burdens. We have had serious cases of manufacturers involved, but they have gotten fewer over the years because we have been enforcing this law for a decade. What we find is the manufacturers and many distributors are doing an improved job of policing themselves. That is, of course, because we are here. But still we think it is true and that we can withdraw some effort from that area and put it into the areas where we know major, large amounts of drugs are actually being diverted into the street now, not in theory, but at the present time. So it is a question of shifting balance and shifting emphasis rather than vacating any responsibility.

ELIMINATE DIVERSION INVESTIGATIVE UNIT PROGRAM.

Senator WEICKER. Your budget proposes elimination of diversion investigative units, 21 positions, and 1.071 million. What is the purpose of these units and how much of their activity has been spent on training of State or local officials?

Mr. BENSINGER. The original purpose was to establish within the individual States the capacity to perform retail diversion examination, investigation, and control. Each year an amount of about $1 million had been appropriated and three States added to the list of States funded for this purpose.

The obligations in fiscal year 1981 are Louisiana, Arizona, District of Columbia. The States, I can give you a list of them here, Chairman Weicker, of the States that are funded. Basically our budget states that next year we will not be requesting additional States for this DIU program.

CARGO PREFERENCE ACT LEGISLATIVE PROPOSAL

Senator WEICKER. What savings in this budget request are contingent upon the enactment of legislation?

Mr. BENSINGER. $250,000 is identified as a result of the Cargo Preference Act. We have about 270 employees overseas. A lot of the personal effects, household goods, to and from overseas locations, are moved by regulation on U.S. carriers. If that legislation is adopted, it is estimated by the Controller that $250,000 will be saved. That is included in our budget.

Senator WEICKER. Do you know when legislation will be submitted?

Mr. ARNOLD. No, sir, it is being prepared by the administration. We don't know when it is coming up.

Senator WEICKER. I really think that from a budgetary point of view you people are doing this all backward. You know the Congress as well

as anybody else does. You know the time that passes between somebody's idea and when a matter becomes law. I am perfectly willing to be conservative as far as my budgetary procedures are concerned, then it seems to me that you don't make the kind of assumption that legislation will be adopted.

Mr. ARNOLD. Chairman Weicker, we didn't have a lot of options. This is legislation that is being prepared for the entire Government.

Senator WEICKER. I believe your statement. [Laughter.]

ADDITIONAL COMMITTEE QUESTIONS

I have further questions in here that I will submit to you for response to the record.

I am sorry we are a little bit curtailed. I find this very interesting. I would like to continue to go through it. So thank you very, very much.

Mr. BENSINGER. Thank you very much, Mr. Chairman.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Priority Cases

In your original budget submission (Carter budget) you ranked the state and local task forces and the Diversion Investigative Unit (DIU) programs higher than state and local laboratory services and research and development. In the revised 1982 submission, the task forces and the DIU programs are significantly reduced and eliminated, respectively, but research and development and state/local laboratory services remain. Could you explain this change in agency priorities?

In a period of significant constraints on resources, difficult decisions must be made. In this instance, both Research and Development and State and Local Laboratory Services had already been reduced to the minimum level. The policy decisions reducing the State and Local Task Forces (while retaining an effective program level) and eliminating the seed money program, the Diversion Investigative Units, were related to the decision that the state and local authorities will have to share the burden for problem areas such as drug law enforcement.

Your original FY 1982 budget indicates that nearly half (3,051 out of 6,992) of federal arrests in 1980 involved Class I cases. In these arrests, how many of the individuals involved were Class I violators?

The 1980 actual data has been amended since the time of the initial budget submission. Three thousand one hundred fifty six arrests were made in Class I DEA-initiated cases and a total of 6,423 arrests were made in all levels of DEA-initiated cases.

Of the arrests (3,156) in Class I level cases, 918 were Class I violators.

Since one of DEA's primary objectives is to concentrate on high level violators, do you consider this performance satisfactory?

Arrests in Class I cases have increased yearly for the past three years as a consequence of concentration of investigative activity on Class I and Class II level cases and the development of increased numbers of such cases. The proportion of Class I violators arrested within Class I level cases appears to be approximately 30 to 35 percent and somewhat constant. DEA considers this performance to be satisfactory. Of major importance will be assets seized as well.

Through the years it appears that the number of Class I traffickers arrested has been only about one-third the number of Class I cases. Could you explain the reasons for this apparent discrepancy?

Class I violators represent about one-third of all violators arrested in Class I cases. To become a Class I case, there must be at least one Class I violator involved. Within any drug trafficking organization there will be many more violators of a lower Geograhic Drug Enforcement Program (G-DEP) classification than the principal violator(s). The major organization will have many couriers, distribution officers, money laundering contacts, etc.

Violent Crimes

The Attorney General has stated that violent crime is a top priority in the Administration. Much violent crime is drug related. However, it by and large involves low level traffickers and users. To what extent will this new violent crime initiative offset DEA's concentration on the higher level echelons of the drug trafficking system?

Since the Attorney General's violent crime initiatives have not been totally formalized, it is difficult for DEA to answer the question as to impact on DEA's enforcement program. We cannot speculate on the course these initiatives will take at this time. DEA intends to continue its concentration at the upper levels of the drug trafficking system since this has the greatest impact on the availability of drugs, and the drug problem in general.

What offset will DEA's reduction of assistance to state and local governments have on violent crime initiatives of these levels of government?

It would be highly speculative on our part to project what impact reduction of funding assistance to state and local governments would have on their ability to deal with violent crime.

Any reduction in the drug problem will have an affect on associated violent crime. DEA's cooperative activities with state and local authorities have been designed to develop the capability for the state and local agencies to carry out drug enforcement operations on their own.

Our 1982 budget proposes a continued State and Local Task Force program and a strong liaison and training program.

Is the reduction consistent with the Attorney General's violent crime initiative?

The Violent Crime Task Force may have recommendations on legislation and resources. It would be premature to judge whether DEA's budget priorities coincide at this time.

Foreign Operations

One of the objectives of your Foreign Cooperative Investigation program is to promote the adoption of crop substitution and alternate income producing programs. How are you pursuing this objective?

We are strongly supporting this principle in all appropriate forums and with the Department of State and various foreign governments in their efforts toward achieving this objective.

Specifically, the Administrator of DEA met with the Director of the Agency for International Development (AID) on April 1, 1981 and voiced DEA's support of the principle of crop substitution and alternate income programs. He has also espoused DEA's viewpoint on this issue to the House Subcommittee on Inter-American Affairs and to U.S. Ambassadors in countries where this is an issue.

Additionally, DEA representatives in the appropriate countries work as an integral part of the Ambassador's country team in identifying the need for such programs, assisting incertain phases of the planning, and monitoring any enforcement activity which may be undertaken in connection with the programs.

Currently the DEA district office in Lima, Peru is working very closely with the U.S. Embassy and AID in planning an economic development program in Tingo Maria, Peru.

What other federal agencies are involved?

The primary responsibility for this function is the Department of State. This is necessary as funding is for foreign assistance rather than law enforcement support. Technical knowledge, advice and support is also requested from the Department of Agriculture, AID and the Department of Treasury.

To what extent are other nations cooperating in this effort?

This is dependent on the particular country involved. In Mexico, for example, the Government of President Lopez-Portillo has achieved substantial success in eradicating illicit poppy cultivation, thereby reducing the amount of heroin exported to the United States. The Government of Mexico, while not accepting economic assistance from the U.S., has expressed an interest in multilateral development assistance and is seriously committed to eliminating illicit narcotics.

Turkey at one time was the major supplier of opium in the illicit market. In 1972, Turkey changed the system for marketing opium to the poppy straw method which allows for little or no diversion into the illicit traffic.

In Peru, planning for the Upper Haullaga Area (Tingo Maria) Development Project has begun. The aim of this project is to establish viable economic alternatives to cocoa production. The proposal includes processing industries, marketing infrastructure, credit, agricultural services and upgrading and construction of roads in the area. Financing from the Government of Peru and international sources will be necessary to implement this project which, it is anticipated, will require funding of $167 million over five years.

The United Kingdom is funding an expert on coffee production attached to the IBRD Rural Development Project in the Northern Thailand.

Approximately 10 percent of DEA's personnel are involved in foreign cooperative investigations. How successful are these operations?

Drug trafficking is a worldwide problem and is being addressed on a worldwide basis. While the DEA Foreign Cooperative Program is focused on drug trafficking enroute to the United States, the international nature of the trafficker makes interdiction at any point directly beneficial to the United States.

The primary objective of the DEA overseas program is to reduce drug availability by the involvement of foreign governments in effective drug control activities. This is done by providing advice, encouragement, and technical assistance directed toward the establishment of crop eradication programs, narcotic enforcement agencies,

national drug laws, and cooperative interdiction and intelligence programs.

An outstanding success over the last several years has been the Government of Mexico's opium poppy eradication program. The reduced availability of heroin in the United States is a direct result of the cooperation of the Government of Mexico. Technical assistance was supplied by DEA in encouraging the Mexican Government to implement the successful opium crop destruction program. At the same time major traffickers were identified and investigated on both sides of the Mexico-United States border. A cooperative prosecution program was also begun so that major traffickers could not easily escape from one jurisdiction to another.

From a high of 6.5 tons of Mexican heroin entering the United States a few years ago, it is presently estimated that less than one ton can be attributed from Mexican heroin laboratories. This had the further effects of reducing the death and injury rate from drug usage and the purity of heroin on the illicit market.

In South America, major countries, with DEA advice and assistance, have continued to support the formation of single jurisdiction narcotics intelligence and enforcement agencies, developed and implemented improved narcotics laws in major problem countries, and became increasingly aware of and sensitive to the effects of drug trafficking on their economies and societies.

In Europe, there is an increasing flow of intelligence from monitoring Southwestern Asia trafficking activities. Intelligence probes in West Germany have identified a sizable number of Turkish traffickers smuggling Southwest Asian heroin into Western Europe. Italian police have requested increased DEA assistance and through cooperative efforts have seized several heroin laboratories and have established firm links between Italian and New York-based organized crime elements. Spanish authorities have had positive results with DEA's support programs in identifying an Asian control group responsible for heroin trafficking in Europe and the United States.

In Southwest Asia, intelligence probes in Pakistan have pinpointed locations of laboratory operations, and assessed the potential output of a number of sophisticated morphine base, morphine sulfate and heroin production operations.

In the Far East, there is evidence of a general increase in host country commitments in terms of increased arrests; prosecutions; heroin laboratory seizures; and opium, morphine, and heroin seizures.

While drug availability varies by source, the difference a DEA presence makes is best demonstrated by the tremendous increase in Southwest Asian heroin from Afghanistan and Iran where DEA has no presence. After DEA and the U.S. Mission personnel withdrew from both countries, illegal opium production in these two skyrocketed. If our offices were not working closely with French, Italian, German, and Turkish police, the heroin influx would be far higher, perhaps double the present level or at the rate of the French Connection period.

Given the relative investment in personnel and funds, which operations are more successful - domestic or overseas?

It is generally recognized that the closer the investigation gets to the source of supply the more impact it will have on the over-all availability of drugs. It is imperative that our international programs be strong and dynamic. Stopping the drugs abroad, before they enter the marketplace, is one-hundred-fold more effective than arresting major violators at home. It should not be assumed that an enforcement action overseas, which has a significant impact by identifying and eliminating a laboratory or identifying and arresting a major source of supply, was solely the result of our foreign operations. Our foreign and domestic operations are inter-related and dependent upon each other for the flow of intelligence and continuity of investigations. DEA's attack must be a balance of foreign and domestic operations working in concert. DEA agents overseas will generally impact on greater quantity and higher purity of drugs than domestically assigned agents.

Since many opium-producing areas (Afghanistan, Iran, Southeast Asia) are no longer relatively accessible to United States citizens and influence, where are you placing the emphasis for disrupting the supply chain?

We have moved to our second line of defense, the conversion and transhipment countries. These are offices located in such areas as Turkey, Pakistan, Italy, and Austria. Offices are planned for areas such as Cyprus, Kuwait, and Greece in an attempt to further disrupt the movement of opiates from Southwest Asia.

We have initiated nineteen special enforcement and intelligence programs in Europe and Southwest Asia during the last year in Austria, Belgium, France (2), Greece, Germany (4), Italy (2) Lebanon, Netherlands, Pakistan (3), Spain and Turkey (2). These programs augmented the manpower and financial resources available to the DEA offices in the respective countries and directed the resources to specific enforcement and intelligence goals regarding the traffic of this heroin. The scope of this intelligence and enforcement effort includes quantitative surveys of illicit opium production, identification and disruption of clandestine heroin laboratory activities, interdiction of opiates at vulnerable points along its' routes, and identification and immobilization of the major international trafficking organizations that are involved. A concomitant goal in this activity is to enhance the initiative and capability of DEA foreign counterparts in combatting the heroin traffic.

In addition to these special enforcement and intelligence programs, DEA is conducting narcotics enforcement training programs in critical countries in order to increase the awareness of these countries regarding the narcotics problem and to improve their narcotics enforcement capability. This program is currently concentrating on Pakistan (primary source area for opium) and Turkey (primary heroin production and trafficker source area) where since 1980 several hundred police officials have received DEA training.

To what extent are European and Latin American Governments assisting in this effort?

DEA has open lines of communication with principal European Governments influenced by Southwest Asian heroin. We now have, or will

shortly have, offices in Turkey, Greece, Italy, France, Netherlands, Denmark, England, Belgium, Spain, Austria and Pakistan. In addition, Kuwait and Switzerland have made overtures to DEA concerning the establishment of a presence in their countries.

Europe and the Middle East are focal points where DEA has utilized bilateral or multilateral national initiatives to stem the flow of Southwest Asian heroin.

Bilateral operational enforcement and intelligence activities are used to enhance host country enforcement programs specifically related to Southwest Asian heroin and to focus high-level attention on the problem.

Does your withdrawal of the $5.4 million in the supplemental request originally targeted for Southwest Asian heroin trafficking reflect a reduction of priorities?

No, the national and international effort, spearheaded by DEA, against the threat of Southwest Asian heroin has not been reduced in priority. Southwest Asia (SWA) heroin remains the number one priority of DEA.

The approach and methods used in addressing the problem have been modified because of funding. In 1981, fiscal constraints, cutbacks, and limited supplemental funding have dictated a modification of the original strategy.

DEA is expending the majority of the planned funding for SWA heroin investigations overseas as close as possible to the source of supply. The modified strategy of striking as near as possible to the source continues the momentum to yield the desired result of containment of the SWA heroin threat in the U.S., and the rollback of SWA heroin trafficking in Europe and the Middle East.

Vehicles

Information submitted to the Committee indicated that 1,386 vehicles in the fleet meet the replacement criteria. The original budget request 310 replacement vehicles and the revised request is for 277. Will you be able to make up the short fall through seizures?

Forfeited-seized vehicles are the alternate source of replacement vehicles and to the extent possible this source will be used to make up any shortfall.

How many vehicles, seized last year, did the agency retain?

One hundred twenty passenger motor vehicles.

What percent of your vehicle inventory is composed of seized vehicles?

As of March 24, 1981, 21.4 percent.

TYPE	HOW ACQUIRED		TOTAL
	Purchased	Forfeited	
Passenger Cars	1,646	447	2,093

The vehicle fleet consists of regular passenger cars, including many with policy specifications, and special purpose vehicles. The 450 special purpose vehicles include trucks and other types of investigative conveyances. The vehicle fleet is managed directly by DEA and is maintained by commercial facilities. In addition to the DEA vehicle fleet, approximately 54 vehicles are leased, primarily from GSA, for use by Compliance Investigators.

With the reduced request for vehicles, why are you asking for the same amount of money?

The justification was formulated based on an estimated average unit cost of $6,800 per vehicle several months ago. We are now advised by the General Services Administration, which does the buying for DEA, that the current estimated average unit cost is now $7,600 per vehicle.

An increase of $1,400,000 provides for the replacement of 277 passenger motor vehicles at an estimated average unit cost of $7,600 per vehicle, or an overall cost of $2,108,000. The offset is proceeds of $702,000 from the sale of vehicles that are no longer economical to operate.

Diversion

DEA estimates that 90 percent of the diversion of legitimate drugs occurs at the retail level. What information do you have that compares the level of drug abuse that results from illegal diversion activities with abuse resulting from unintentional overprescribing by doctors?

The distinction between the abuse of drugs which results from unintentional overprescribing and willful diversion is somewhat artifical. Physicians who are either negligent or impaired quickly become recognized as a drug source within a community. The DEA estimates that approximately 12,000 practitioners are involved in diversion of some form or another, from indiscriminate prescribing to illicit sale. In 1979/1980, the DEA's Operation Script was started as a pilot program to identify and investigate major practitioner violators. The first 20 physicians convicted under this program had been responsible for the diversion of 18 million dosage units. Our current plan calls for identifying 150 practitioners at the G-DEP I and II level. We believe these practitioners will be responsible for a significant amount of the retail diversion at present. DEA will also continue to support swift and effective action by state licensing boards to prevent the "intentional overprescribing."

Can you compare the level of abuse of legitimate drugs manufactured domestically with the abuse of clandestinely-manufactured dangerous drugs and internationally-diverted drugs smuggled into the country?

With regards to the abuse of legitimately-produced drugs as opposed to drugs of clandestine origin, some indications may be drawn from

available DAWN data. In 1979, roughly 70 percent of all DAWN mentions could be identified to 15 abused controlled substances. Of these, 11 drugs were produced legitimately. These 11 account for 50 percent of all DAWN mentions, and only one of the legitimately-produced substances has been involved in clandestine activity of any magnitude.

DEA relies heavily on voluntary compliance by industry and professionals. How successful do you believe this self-policing policy to be?

The primary objective of voluntary compliance is to prevent diversion of substances by supporting and fostering self-regulation and self-enforcement within the regulated industry and professions.

The benefits of voluntary compliance include participatory enforcement of the regulations and self-policing efforts by registrants, more informed registrants because of planned and regular educational and training programs, reduction in unintentional diversion of controlled substances, increased awareness by the regulated industry and professions of the law and regulations, and support of DEA's efforts by these groups.

The DEA maintains active liaison with dentistry, medicine, nursing, pharmacy, osteopathic medicine, podiatric medicine, veterinary medicine, the pharmaceutical industry, and drug distributors. Aimed at increasing industry's efforts to prevent diversion, the voluntary compliance program is implemented through four major areas of activity: communication with and education of registrants through publications and conferences, operation of five national DEA/Working Committees, conduct of an exhibits and meetings program, and involvement in special programs and projects. All of these have contributed to upgrading compliance while emphasizing the need for a strong industry self-policing program.

A voluntary compliance program provides a conduit to professional associations, professional schools, licensing boards, and the regulated industry which encourages registrants to speak up about potential compliance problems to communicate, and to cooperate. By relying on registrants' professional integrity, self-determination, and trust, DEA is able to enlist the support of registrant groups in pinpointing areas of non-compliance.

The voluntary compliance program is a proactive program which takes the initiative to search our areas for increasing compliance through the direct efforts of its registrant groups. Some of the program's significant activities include: refinement of the DEA/Regulatory Boards Working Committee, active promotion to the medical professions of the "Guidelines for Prescribers of Controlled Substances," distribution of a new "Pharmacist's Manual," publication of the biannual issue of DEA/Registrant Facts, and the placement in field offices of twenty-nine voluntary compliance portable exhibits for use at state, county, and local professional meetings.

Voluntary compliance has been particularly effective with large-scale manufacturers and wholesale distributors in general. It has been less successful at the retail practitioner level.

What more could be done to improve the record and reduce diversion?

The DEA has been redirecting its activities from cyclic, non-practitioner investigations to practitioner investigations. This is where the problem is and this is where our response should be directed. As an underpinning to this change in direction, we have maintained that our activities must be at the G-DEP I and II level. We feel that this is appropriate for the federal work effort.

Additional efforts should be directed in the area of international diversion. The DEA's international regulatory program, with two investigators in place, has resulted in the interdiction of 12.6 tons of illicit methaqualone, among other items. Intelligence gathering and liaison with foreign regulatory officials has resulted in greater international awareness of vulnerable commerce channels and an ability to directly impact on drug trafficking operations.

Drug thefts also continue to constitute an area of significant diversion. Thrity to forty million dosage units are lost annually. Violence associated with these thefts has increased dramatically. The number of armed robberies has almost doubled since 1976. The identification of trends and exploration of security technology could result in progress in this area; as could revision in certain regulations and penalties in the Controlled Substances Act currently under review at the Department of Justice.

Your 1982 budget request eliminates funding and personnel for Diversion Investigation Units. What impact will this elimination have on efforts to curtail diversion?

The 1982 budget reduction will have no impact on the 23 established Diversion Investigative Units (DIUs). The DIU concept has been since its inception, a "seed fund" program. This means that DEA assisted 22 states and the District of Columbia in establishing DIU's that eventually will continue to function with state funds and state resources.

We will continue to work with state officials to encourage the voluntary establishment of law enforcement units to investigate diversion of legitimately-manufactured controlled substances.

We will not, however, in 1982 be seeding new states or jurisdictions with 2 or 3 new Diversion Investigative Unit as we have in each of the last several years.

What is the effect of eliminating DEA's Diversion Investigative Units?

We will not be eliminating the DIUs that have already been established. These units were specially designed to be state-operated units with the individual state providing the heaviest concentration of funding and workyear resources. DEA, with its "seed fund" concept, provided a portion of funding and workyear commitment for a period of two years to allow the state sufficient time to become self-sufficient. This concept is fully discussed with state officials and agreed upon, prior to the commitment of any funds. This concept has proven to be highly successful in that of the original 24 DIUs established, all but one have continued the program after the federal funding subsided.

We will not be providing the "seed funds" for the establishment of additional DIU's beginning in 1982.

SES Bonus

Do you propose to re-submit legislation authorizing the payment of SES bonuses to your high-level career employees?

DEA will continue to seek legislation extending pay and benefits to its senior executives similar to those provided to members of the Senior Executive Service. This legislation is considered necessary for equity to DEA senior executives. DEA executives serve under the provisions of P.L. 94-503 which provides tenure provisions more stringent than SES but does not provide for the pay and benefit provisions included under P.L. 95-454.

Aircraft

How many aircraft does DEA currently own?

27	single engine airplanes
8	light twin engine airplanes
2	heavy twin engine airplanes
3	single engine helicopters
40	

How much money is in the current budget for purchase of aircraft?

There is $500,000 in DEA's request for 1982. With these funds, we plan to purchase eight single engine airplanes for replacement of eight airplanes acquired from the U.S. Army which are 15 years old or more.

To what extent does DEA use seized aircraft?

Five single engine and five light twin engine aircraft currently in the DEA fleet were seized and forfeited to the Government.

Could this be a source of replacement rather than purchasing?

Yes. DEA has acquired several excellent aircraft through seizure. However, we can expect to acquire a limited number through this means due to the following reasons.

- Many aircraft seized in drug trafficking investigations are not forfeited to the Government as the aircraft owner is judged to be an innocent party.
- Many aircraft are not owned outright by the trafficker. Therefore, any outstanding lien must be satisfied by the Government. These frequently exceed $100,000.
- Many aircraft used in the illicit drug traffic are damaged due to crashes. Most traffickers do not keep required maintenance records, nor is required maintenance performed. Aircraft are often overloaded causing metal fatigue.

- The forfeiture process can take considerable time (sometimes years). This results in deterioration of aircraft under seizure.

To what extent do you obtain aircraft from excess military stocks?

Presently, 16 of the 40 aircraft we operate were acquired from the Department of Defense. Of these, two are heavy twin engine airplanes and 14 are light single engine airplanes. All were acquired in 1975 and 1976.

Could this be a source of replacement?

Only to a limited degree currently. Most military aircraft are jets. Those propeller type aircraft which are excessed have high use time and would require reconditioning. Some are not suited to DEA's mission and those that could be adapted have high operating costs.

State and Local Task Forces

The Administration is proposing a substantial reduction in state and local task forces from 200 positions to 114. These task forces are involved in investigative efforts on all levels of violators.

The number of state and local cooperative arrests is declining from 4,283 in 1980 and 4,030 in 1982. Furthermore, the number of task force initiated arrests is also declining: 2,630 in 1980 to 2,330 in 1982. First, what is the reason for the decline?

The decline in state and local cooperative arrests is based on the planned reduction in the state and local task force program. The data in this question relates to the initial budget submission for 1982.

The amended arrest data are as follows:

	1980	1981	1982
State and local initiated arrests	1,634	1,550	600
Task Force initiated arrests	2,776	2,340	2,040
Total	4,410	3,890	2,640

Second, what percentage of arrests is comprised of users, as opposed to pushers or traffickers?

DEA's statistics are related to the level of involvement of the violator in the drug traffic. We classify cases in four categories in our G-DEP system. The level of case is dependent upon the level of the highest violators in that case. We focus our efforts on Classes I and II cases. The use of drugs by the violators would not be relevant to the classification relating to involvement in the traffic.

Class IV violators are not necessarily users. This classification delineates their position in trafficking organizations, and generally relates to couriers and retail sellers of controlled substances.

DEA targets and prioritizes the arrest of traffickers, some of whom may be habitual or infrequent users of drugs. The focus of investigative endeavors is aimed at trafficking stature and supply capability within organizations.

What effect will the position reductions have on diverting drug traffic?

We would anticipate that there would be a reduction in arrests. There would also be less intelligence and informant input into higher level traffickers.

However, much of our efforts in the State and Local Task Force program has been aimed at leaving an effective trained local drug law enforcement presence when the federal support is terminated, and that force would offset some of the impact of the reductions.

Funds for Purchase of Evidence and Payment of Informants

Why are you requesting that $1.7 million for purchase of evidence and payment of informants remain available for two years?

Purchase of evidence and payment of informant (PE/PI) funds are used to purchase drugs and controlled sustances in undercover operations, to pay informants, etc. Heretofore DEA's PE/PI funds have been "one year" funds; any part of the appropriation not obligated by September 30 must be returned to the Treasury. This has complicated the administration of the PE/PI accounts at the end of each year.

PE/PI funds are a widely used and indispensable tool in drug law enforcement; indeed, it is difficult to imagine how a drug agent could function without the ability to buy drugs and purchase information. Since PE/PI funds are used in virtually every drug case, it is impractical to manage or control these funds from a central place, e.g., headquarters or even a regional office. Management of the funds, while subject to rigorous controls, is decentralized to the lowest self-contained DEA organizational unit: the resident office.

Decentralized allocations, coupled with the unpredictability of expenditure opportunities, often result in compromised decision making when the availability of funds is time constrained.

The typical DEA office manager faces a real quandary in the utilization of PE/PI funds, especially in the fourth quarter of the fiscal year. His initial allocation is—for want of a better measure—related to the amount of PE/PI his office used in the prior year. His allocation in the year to come will be based on what he expends this year, which is directly related to investigative activity and availability of drugs. The office manager is hesitant to expend his entire allocation for the current year by, say, the end of August, since this would leave him nothing to use for the "big" case or a case involving a higher priority type of drug that might come up in September. On the other hand, if he holds PE/PI funds in reserve for use in the last month or the last week of the fiscal year, and if the "big" (or priority) case does not develop on schedule, he is left with unobligated PE/PI balances.

The administration and accountability for PE/PI funds are as tightly controlled as a program can be, and an extensive system of integrity safeguards has been adopted to assure that PE/PI funds are not misused. Nevertheless, given the unpredictability of drug purchasing opportunities, it is not possible to develop guidelines or regulations to guard against less than optimal year-end spending.

"One year" spending of PE/PI leads to other problems. Medium and long-range operations must often be terminated at the end of a fiscal year and be started again in the new year. Many operations must come to a halt for the two weeks or so at the beginning of the year that it takes to distribute PE/PI allowances to the field. The use of Treasury flashrolls must be curtailed at the end of the year because, if a flashroll should be lost, there are no funds in reserve to make up the loss— putting the agency in a deficiency position. The proposed change in appropriations language will eliminate the disruptive nature of "one year" funding and remove any possible incentive for less than optimal management of the PE/PI accounts. If as little as $1,700,000, or 15 percent of the total amount requested for PE/PI in FY 1982, is appropriated on a two-year basis, efficiency will be improved to the point where the operations themselves will be enhanced. Consider the following examples:

1. Medium and long-range operations could be continued without termination or interruption due to fiscal year end.

2. The agency would be able to respond to unforeseen targets of opportunity that develop late in the fiscal year. Under the present system there are often insufficient funds remaining the PE/PI accounts because they were spent on less meritorious cases earlier in the year. In such situations, the opportunity may be lost before new funding becomes available.

3. Fourth quarter fiscal planning would be more rational, and tacit pressure to "spend or lose" would no longer exist. Promising investigations could be developed to their fullest potential; under present conditions management may be forced to execute a planned purchase earlier than is desirable to avoid the loss of PE/PI even when, given more time, additional or higher-level violators might be implicated in the transaction.

4. Flashrolls could be utilized without risk or disruption to other operations. At present, flashrolls must be backed up by earmarked funds available either at headquarters or regional levels, even though there is no intention to spend them. Where this occurs late in the fourth quarter, the opportunity to re-use these funds for other purposes may well be lost.

It is important to emphasize that DEA is not proposing an increase in PE/PI funding. The proposal is simply to permit the agency to "carry over" a limited portion of the appropriation into the following year, in recognition of the unpredictability of criminal activities.

RICO Statute

To what extent are prosecutions being brought under the Racketeer Influenced and Corrupt Organization (RICO) statute?

DEA through U.S. Attorneys' Offices around the country utilizes the RICO statutes on the average of four to six times a year. The reason for limited use of these statutes is the burden of proof required for successful indictment and prosecution. Rather, DEA and local U.S. Attorneys generally determine that a case can be more successfully indicted and prosecuted under 21 U.S.C. 848 (Continuing Criminal Enterprise) and 21 U.S.C. 881 (Forfeiture of Trafficker Assets).

Most important, concerning RICO indictments, the Department of Justice policy at the present time is that an illegal association of violators will not be approved as a viable element of proof within a RICO indictment, at least not until the issue has been clarified by the U.S. Supreme Court. Since most narcotic RICO's involve "illegal associations", the prospect of such indictments being approved is very slim. Additionally, and importantly, the policy also mandates that any RICO indictment which is approved cannot be plea bargained by the local prosecutor; rather, it must be tried, or pled to by the defendant. Such a restriction on case disposition is a strong impediment against any attempt to seek the approval of a RICO indictment.

Forfeitures and Seizures

According to your justification, DEA has increased investigative activity leading to prosecution under the civil and criminal forfeiture laws. In what percentage of cases are you seeking forfeiture of assets?

The DEA integrated enforcement program involves a three-dimensional thrust: the arrest and incarceration of major traffickers, the removal of drugs from illegitimate distribution networks and the removal of assests utilized in the traffic and secured with the proceeds of the traffic. The eventual forfeiture of assets is explored in every major investigation: Class I and II and we expect, as a matter of course, signifiant forfeitures. DEA has asset seizures in 1,685 cases out of a total of 7,480 cases opened in FY 1980. During this period, 22.5 percent of DEA investigations involved the seizure of drug assets.

Also, your justification states that, as of October 1, 1980, cash, property, and conveyances siezed amounted to $90.8 million. How much was actually returned to the Treasury?

The asset removal program at DEA is a broad-based integrated effort involving federal, state and local, and foreign law enforcement authorities. At the present time, the DEA seizure/forfeiture system cannot track forfeitures to the U.S. Treasury made pursuant to other ageny forfeiture actions. Within the Federal Government, disclosure rules, regulations, and procedures impede reporting. Our information reflects $40 million of assets in cash, property and conveyances potentially available for deposit to the Treasury or other Government use.

Laboratory Backlog

According to your justification, the evidence backlog under your state and local laboratory services program increased from 1,150 exhibits in 1979 to 1,330 in 1980 and 1981.

However, you are now anticipating a backlog of 2,350 exhibits in 1982 -- a 75 percent increase. What is the reason for this substantial change?

In the 1982 budget, there is a reduction of five positions (3 chemists and 2 clericals) in the state and local laboratory services program. Three chemists would be able to complete the analysis of approximately 1,000 state and local drug exhibits during the course of a year. Since these positions will not be abilable in 1982, these 1,000 exhibits will not be analyzed and will be added to our backlog.

Questions Submitted by Senator Hollings

Violent Crime

The Attorney General told us about his task force on violent crime and has indicated that narcotics law violations fall under violent crimes. Therefore, it is dismaying that the 20 additional positions requested in the supplemental appropriation by President Carter for domestic enforcement were withdrawn by President Reagan. What is the total level of agents proposed for 1982?

The 1982 request contains 1,867 special agent positions. This is 47.9 percent of the 3,897 total positions requested.

The net changes in special agent positions by program are as follows:

State and local training	-5
State and local task force	-78
Diversion Investigative Units	-23
Decreases	-106
Financial investigations	+26
Foreign Cooperative Investigations	+7
Increases	+33
Net change for 1982	-73

How does that compare with the level allowed in the 1981 Appropriations Act?

There are 1,940 special agent positions in the 1981 Appropriation. This is 47.4 percent of the 4,092 total positions.

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Deployment of Agents in South Carolina

We have a chart displaying the deployment of your agents. Drug smuggling certainly is not static. How do you plan to meet the new thrusts such as being experienced in South Carolina?

In March of 1981, DEA's Southeast Region terminated Operation Grouper, a series of undercover investigations encompassing significant marihuana, cocaine, methaqualone smuggling operations in the Southeast, along the Gulf Coast, in New York and New England. During this operation, DEA undercover agents penetrated 14 Colombian/U.S. smuggling organizations resulting in the indictment of 155 major traffickers (45 Class I's; 34 Class II's; 46 Class III's, and 30 Class IV's) in six federal judicial districts. To date 127 defendants have been apprehended. In addition, 30 maritime vessels have been seized along with 1,218,000 pounds of marihuana, 831 pounds of cocaine, 3 million methaqualone tablets and $10 million in assets.

As a result of Grouper and several other interdiction programs being conducted by DEA, Coast Guard and Customs in the Southeast, a displacement in smuggling trafficking patterns has emerged forcing traffickers to move their operations further up the seaboard. This impact has been seen in North and South Carolina, Georgia and along the Texas and Louisiana Gulf Coast.

In order to address these displacement patterns and refocus drug enforcement resources, DEA is planning to add personnel to the Gulfport area of Louisiana, North Carolina and to the Middle District of Georgia. In South Carolina, this year, DEA has assigned additional investigative personnel--one additional agent to Charleston and two additional agents to Columbia—and they will be in place by the summer of 1981.

In addition, enforcement programs will be augmented by periodic TDY assignments to South Carolina during investigations precipitated by Centac or Mobile Task Force operations involving significant domestic and smuggling drug cases.

High-frequency radio monitoring programs are being undertaken in Miami for the Southeast coastal areas to identify and track mothership operations along the coast. This program will be coordinated with the Coast Guard, Customs and local law enforcement units. All these programs will be integrated with increased enforcement, interdiction and eradication initiatives in Jamaica, the Caribbean and Colombia.

Certainly the situation in Florida remains serious, but the smugglers are end running your forces and overwhelming our local authorities in South Carolina. What can be done to augment the DEA personnel in South Carolina?

Heretofore law enforcement efforts, particularly as regards marihuana trafficking in the coastal area, have been reactive rather than proactive, and tend to be somewhat splintered. Since we are able, with some certainty, to predict harvest times in Colombia, and can rely on the experience of law enforcement agencies involved in the coastal area the following plan has been developed. The plan would be restricted in it's initial operations to the coastal area of the State of South Carolina and be headquartered at Charleston. DEA, U.S. Cus-

toms Service, U.S. Coast Guard, and South Carolina State and local authorities would be involved.

The elements of the plan are:

Intelligence Operations. One of the complaints most widely aired by local law enforcement in the target area is that when they receive information about large marihuana movements in their areas, they have limited manpower and cannot act on it, nor do they have anyone or anywhere to forward this often time-sensitive information.

This plan involves at least three two-man teams operating sixteen hours a day to check with local law enforcement on the coast on a daily basis. These units would be composed of at least one officer familiar with the area. They would operate in an undercover surveillance capacity during most of their shift, checking known and suspected off-load sites and staging areas; and would be available for any enforcement response within the area. The teams should be equipped with the appropriate undercover vehicles, four-wheel-drive units, boats, trailer, campers, etc. For the term of the operation, these units would work closely or be integrated with existing U.S. Customs patrol units. There would be a central number at a twenty-four hour command post for any intelligence referrals.

Radio Monitoring and Direction Finding. As a tactical intelligence adjunct to the plan, there would be at least three radio-monitoring and direction-finding units operating twenty-four hours a day and manned by Spanish-speaking agents or officers. These units could be either mobile or fixed (mobile preferred), but U.S. Coast Guard properties are available if technical and communications problems preclude mobile units. The U.S. Coast Guard, would have single-side-band monitoring and direction-finding units for use aboard their cutters to offer additional fixes when needed.

Air Operations. Over-water air capability would be provided to sight and locate once communication and fix or track is established with a suspect vessel. In addition, aircraft will be utilized to assist on moving surveillance, and to check remote areas along the coast as well as off-load sites. Air operaions should be coordinated between DEA, Customs and the South Carolina State Law Enforcement Division (SLED).

Bail Violation

Mr. Bensinger, you have often told this Subcommittee that bail for high-level drug traffickers is ridiculous since they regard bail bonds as "lunch money". Do you have a chart that indicates the number of indicted persons on drug charges out on bonds of $100,000 or more who failed to show up for their trials?

DEA has surveyed its field locations and determined that 50 violators had jumped bond of $100,000 or more during 1980. There were an additional 486 fugitives declared in 1980. Their bails covered a broad spectrum below $100,000. We now have a total of 2,960 fugitives.

I am co-sponsoring Senator Kassenbaum's bill (S. 440) to deny bail to drug traffickers. Does DEA regard that bill as an adequate response to the problem?

Yes, DEA has advised the Department of Justice that we support S.440. DEA believes that the approach taken by S.440 to restore to judicial officers the discretion to determine and fix the amount and conditions of bail is long overdue. The existing provisions of the Bail Reform Act have resulted in an inflexible system of personal recognizance release which is particularly inappropriate in many drug cases.

RICO Prosecutions

Last year the Committee directed the Department to make more effective use of its existing forfeiture authority to immoblize narcotics traffickers. The justifications indicate that 90 percent of the special agent force has received training in conspiracy development techinques. During FY 1980, DEA seized $91,000,000 and $42,000,000 in forfeited assets. However, only $1,050,000 was obtained by applying RICO. In view of the high degree of trained agents, shouldn't there have been a better record?

It is an appropriate time to clarify the situation with respect to the potential of applying RICO prosecutions. When passed in 1970, the statute was seen as a highly effective enforcement and prosecutorial weapon especially in the area of asset forfeiture. The legislative history of this act offered little in the way of guidance. The approach to utilization of RICO was to have the Department of Justice selectively approve all requests from prosecutors. In actuality, RICO cases have proven to be cumbersome and difficult to explain to the court and a jury. DEA, at the present time, sees a greater return on effort with 21 U.S.C. 848 (Continuing Criminal Enterprise) cases and 21 U.S.C. 881 (Administrative Forfeiture or Judicial Forfeiture) pursuits. In 1981, there has been a continuing increase in seizures under these statutes.

State and Local Law Enforcement Grants

The Department has proposed eliminating $6,330,000 of the $9,500,000 currently appropriated for the joint state and local law enforcement grants. Did DEA participate in any evaluation of this program before it was proposed for elimination?

DEA did not participate in the decisions to reduce or eliminate the joint state and local law enforcement grants.

Mr. Bensinger, what is your own personal, professional view of the worthwhileness of the regional intelligence groups that were supported by these grants?

DEA supports the need for increased intelligence sharing between law enforcement units and, for example, is actively seeking to share the intelligence gathered through the El Paso Intelligence Center (EPIC) with a wider range of state and local law enforcement agencies. We asked that LEAA conduct evaluations of the Regional intelligence grants about one year ago. LEAA has recently awarded a contract to

evaluate the contribution of the grantees. In the interim, with the fiscal restraint being implemented by the new Administration, DEA expressed to LEAA/OJARS that these grants should be jointly supported by the states - to share the financing for the support they receive and to increase the accountability (including oversight) of the grantees to the state governments.

Vehicle Replacement or Seizure

Authorization for purchase of 375 replacement vehicles was included in the 1981 Appropriations Act. We are now informed that DEA plans to purchase no vehicles in 1981 even though 50 percent of the base fleet exceeds GSA replacement standards. Why have the planned purchases been eliminated?

In 1980, in support of the President's objective to move toward a more balanced budget, the on-going level of priority programs was provided for through balanced reductions in personnel in areas of lower priority and in areas funded but not implemented, and by deferal of portions of major support costs, including motor vehicles.

What happened to the funds for the 375 vehicles?

The base availability for the purchase of replacement passenger motor vehicles ($1,800,000) was a major support cost reduction. No funds have been available in the direct appropriation or 1981 budget. The appropriation language, however, was not changed. In the 1982 budget we have requested appropriation language and funding restoration to purchase 277 replacement passenger motor vehicles.

The Carter budget proposed the purchase of 310 replacement vehicles in 1982, but President Reagan has reduced the number by 33 to 277. The original justifications stated that the 310 were "essential to ensure that an absolute minimum number of exiting sedans are replaced and that overall effectiveness of fleet resources is not further diminished". DEA usually makes up for shortfalls in vehicle replacements by intensifying the seizure of vehicles. However, we note that only 150 seizures are still planned in 1982. How will you make up the reduction of 33?

To the extent that the situation presents itself, we will attempt to use forfeited seized vehicles to offset any shortfall in the required replacement program in 1982.

Where in the revised justifications is the budget reduction associated with the decrease of 33 cars to be purchased?

Vehicle replacement is discussed on page 20 of the DEA request for 1982. This justification was formulated based on an estimated average unit cost of $6,800 per vehicle several months ago. We are now advised by the General Services Administrtion, which does the buying for DEA, that the current estimated average unit cost is now $7,600 per vehicle.

An increase of $1,400,000 provides for the replacement of 277 passenger motor vehicles at an estimated total cost of $2,108,000. The difference is made up of proceeds of $702,000 from the sale of vehicles that are no longer economical to operate.

Aircraft Replacement or Seizure

How many airplanes did DEA seize in fiscal 1980 and 1981 to date?

DEA seized thirteen aircraft in 1980. In 1981, through March 31, 1981, five have been seized.

DEA can now only seize property worth up to $10,000, such as automobiles. Property worth more than $10,000 can only be forfeited by a court order which obviously rules out DEA directly seizing airplanes. Is there any procedure we could adopt to make the seized planes available to DEA and to state and local drug enforcement agencies?

The provisions of 21 U.S.C. 881 allow DEA to seize all vehicles, vessels and aircraft used to facilitate drug violations. Conveyances valued at less than $10,000 are forfeited administratively by DEA, unless a claim and bond are filed to make the seizure judicial. Conveyances valued at more than $10,000 are forfeited judicially, and although some of the civil proceedings to complete such forfeitures take time, DEA ultimately often places such property in use.

The practical problem regarding seized aircraft is that although aircraft are subject to forfeiture, most aircraft are either leased by the violator, or have such a high lien that the actual interest of the violator (which is all that is actually forfeited when remission of the forfeiture is granted to innocent owners or lienors) is minimal. DEA has had a few cases where we have paid a lienholder's equity in an aircraft in order to obtain the aircraft for official use (pursuant to 40 U.S.C. 304i and 304j).

The prohibitions in GSA statutes and regulations prohibit DEA from transferring seized and/or forfeited aircraft to state and local enforcement agencies. If an aircraft is no longer suitable for DEA use, we are required to report the aircraft to GSA as excess to DEA needs. GSA is then required to screen the aircraft through federal agencies before the aircraft is declared surplus to federal needs. The aircraft will then be offered by GSA to state agencies involved in eduction, public health, civil defense, or public airports. If no federal or state agencies desire the aircraft, GSA will ultimately sell it.

Could DEA supply an amendment to Senator Nunn's "posse comitatus" bill (S. 441) to allow the taking of surplus military aircraft for both DEA and state and local drug law enforcement?

Section 373 of S. 441 could be amended as follows to allow state and local drug enforcement agencies to obtain military aircraft. The first paragraph below is the existing text of Section 373 (which already allows DEA to obtain military equipment), while Section 2 below is a possible amendment:

> "§373. Use of armed forces equipment and facilities.
>
> The Secretary of Defense or his designee is authorized to make available any equipment, base facility, or research facility of the armed forces to any federal drug enforcement official if the transfer, loan, or use of equipment or of facility will not adversely affect the military preparedness of the United States."

Section 2. Notwithstanding any other provisions of law, any federal drug enforcement official who has obtained any equipment pursuant to the preceding paragraph, may further transfer, loan, or allow the use of such equipment, to any state or local official charged with enforcing state drug laws.

To date the Administration has not taken a position on the bill.

BUREAU OF PRISONS

STATEMENT OF NORMAN A. CARLSON, DIRECTOR, BUREAU OF PRISONS

ACCOMPANIED BY:

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GERALD M. FARKAS, ASSOCIATE COMMISSIONER, FEDERAL PRISON INDUSTRIES, INC.
ALLEN F. BREED, DIRECTOR, NATIONAL INSTITUTE OF CORRECTIONS
LUMAN N. RENSCH, JR., CHIEF, OFFICE OF BUDGET DEVELOPMENT
DAVID J. SWEDA, BUDGET OFFICER, OFFICE OF BUDGET DEVELOPMENT
CHARLES R. NEILL, DEPUTY ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION
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MICHAEL J. ROPER, ASSISTANT DIRECTOR, LAW ENFORCEMENT AND CORRECTIONS PROGRAM GROUP, BUDGET STAFF

PREPARED STATEMENT

Senator WEICKER. Our next request is for the appropriation of the Federal Prison System. The regular request is for $383,784,000, an increase of $3,869,000 from the base. This includes $358,282,000 for the "Salaries and expenses" appropriation, $11,771,000 for the National Institute of Corrections, and $13,731,000 for Buildings and Facilities.

Appearing on behalf of this request is Norman A. Carlson, Director, Bureau of Prisons; Gary R. Mote, Assistant Director, Division of Planning and Development; Gerald M. Farkas, Associate Commissioner, Federal Prison Industries, Inc.; Allen F. Breed, Director, National Institute of Corrections; Luman N. Rensch, Jr., Chief, Office of Budget Development; Charles R. Neill, Deputy Assistant Attorney General; John R. Shaffer, Deputy Director, Budget Staff; Michael J. Roper, Assistant Director, Law Enforcement and Corrections Program Group, Budget Staff.

[A brief recess was taken.]

Senator WEICKER. The committee will reconvene.

I apologize to Mr. Carlson for the interruption.

Please go right ahead. We will accept your statement in its entirety in the record at this point.

[The statement follows:]

STATEMENT OF NORMAN A. CARLSON

I appreciate the opportunity to appear before you once again to discuss the Federal Prison System's budget request for 1982. As you will note, we are requesting an amended total of $383,784,000 and 9,851 positions for 1982. This represents an increase of $21,916,000 and a decrease of 362 positions from the anticipated current year levels.

Prison Population

Unlike prison populations in most of the states, the Federal prison population has decreased during the last three years. After reaching an all time high of 30,400 in August 1977, the inmate population has declined to a current level of 24,200. This total includes 1,750 Cuban detainees identified by the Immigration and Naturalization Service as having significant criminal records. By the end of this month, we plan to have most of the Cubans housed in a single facility - the U.S. Penitentiary, Atlanta, Georgia.

Systemwide, population is within existing institution capacity although several institutions currently remain overcrowded. We are actively working to correct these imbalances.

The principal reason for the decline in population was a shift in the Department's prosecution policy emphasizing white collar and organized crime, public corruption and major narcotic violations. Moreover, the number of inmates transferred to community treatment centers immediately prior to release, continues at a high level.

Attempts to project future prisoner population are extremely difficult because of the many variables involved. We believe, however, that the decline is over and observe that criminal filings by United States Attorneys have increased in recent months. If this trend continues, Federal prison population could very well begin to increase again. Additionally, changes in prosecution policy, particularly regarding bank robbery, could be expected to produce significant increases in new commitments.

McNeil Island

As you are aware, the Bureau was actively phasing out the antiquated U.S. Penitentiary, McNeil Island, Washington, and had planned to close the facility by October 1980, significantly ahead of the Congressionally mandated date of

January 1, 1982. These plans were delayed, however, when the U.S. District Court for the Western District of Washington issued a restraining order preventing the transfer of 175 Cuban detainees from the institution until their exclusionary hearings were completed by the Immigration and Naturalization Service. That order was recently rescinded following completion of the hearings and the Cubans have been relocated to the U.S. Penitentiary, Atlanta, Georgia.

The State of Washington is experiencing severe prison overcrowding and is under court order to reduce the population at the state penitentiary. To help ameliorate this problem, we are assisting the State in obtaining a lease for the use of McNeil Island through the General Services Administration. Also, we have agreed to operate the institution to house up to 300 medium and minimum security state prisoners on a reimbursable basis until June 30, 1981. By that time, the state intends to negotiate an interim lease agreement to use the facility as a prison.

While our decision to locate the Cuban detainees at the Atlanta Penitentiary enables us to better manage the Cuban population, we have had to modify plans to reduce operations there to accomplish the eventual closing of the facility. The Cuban detainees present a major problem but we are hopeful we can soon proceed with plans to close the facility.

1982 Budget Summary

Although the Bureau's 1982 budget request essentially reflects continuation of many programs at or below current services levels, several important increases are included:

- Resources to activate a Federal Detention Center in Tucson, Arizona.
- Funds to expand 24 hour medical coverage.
- Funds to enable the National Institute of Corrections to expand training and technical assistance programs for state and local corrections.
- Funds to begin the first phase of converting the U.S. Penitentiary, Leavenworth, Kansas, into a modern correctional facility; and to undertake important energy conservation, and improvement projects at existing institutions.
- Funds to cover Departmental support costs related to the increase in the number of on line SENTRY sites.

Salaries and Expenses

For Salaries and Expenses, we are requesting $358,282,000 and 8,922 positions in 1982. This is an increase of $16,328,000 and a decrease of 238 positions from the anticipated appropriation for 1981. An increase of $21,117,000 is requested for uncontrollable items including annualization of positions and programs authorized in 1981; mandatory wage increases; and cost escalation.

We are requesting program increases of $2,502,000 and 28 positions.

- Activation of Federal Detention Center, Tucson, Arizona. The opening of this 200 bed facility will help to ameliorate the long standing critical detention problem in the Tucson area. Additional resources of $1,909,000 and 28 positions are required, in conjuction with resources to be reprogrammed from the Florence, Arizona, Detention Center when it is closed, to open and operate the new center in January 1982.
- Justice data center. An increase of $500,000 is requested to support increased workload in the Justice Data Center which is related to the planned increase in the number of on-line SENTRY sites in 1982.
- Medical Services. An increase of $93,000 is requested to continue progress towards providing 24 hour medical coverage at Bureau institutions.

Offsetting these increases are program reductions of $6,601,000 and 266 positions which reflect the Administration's goals to minimize inflation and ensure the nation's economic recovery. Although the reductions are significant, we believe they can be accomplished without jeopardizing the essential missions of the Bureau. These reductions have been applied in nearly every program area to minimize the overall impact. Following are explanations of the major decreases:

- Farm operations. Reductions of $432,000 and 69 positions reflect the Bureau's decision to close down its remaining farming operations. This action has been considered in the past because of the high costs involved in conducting the program. Moreover, the program has little value in terms of meaningful work training because most of the inmates involved are from urban areas.
- Cancel Expansion of the Federal Prison Camp at Boron, California. The Congress had earlier approved 32 positions and $1,032,000 to expand the capacity at Boron to 375. This expansion is not currently required because of the lower prisoner population.

- Reduce staffing of functional units. Unit management will be reduced by 30 positions and $693,000 throughout the system. This reduction will be accomplished by collapsing some smaller units into larger functional units so that the total number is reduced. This will result in more economical use of unit staff without severely reducing effectiveness.
- Reduce education positions. The education program will be reduced by 36 positions and $841,000. This will have little if any impact on the program because virtually all of these positions are vacant. Moreover, we find that the increased use of modern self instructional materials and aids requires less staff supervision.
- Reduce medical services positions. The medical services program will be reduced by 35 positions and $528,000. This reduction does not impact on currently filled medical positions. The unamended 1982 budget request reflected the reprogramming of 25 positions to the medical program to increase staffing of the psychiatric unit at the Federal Correctional Institution, Butner, North Carolina, and to establish a geriatric unit at the U.S. Penitentiary, Leavenworth, Kansas. These plans are being deferred. In addition, 10 physician assistant positions approved for the current fiscal year which have not been filled, will be abolished.
- Close Federal Community Treatment Centers. Reductions of 31 positions and $1,634,000 will be accomplished by closing Federal CTC operations. This will not affect the level of inmate participation in this program because the Bureau maintains sufficient contract resources to provide for continuation, as well as expansion of the program, if required. The dollar reduction associated with the Federal CTC program will be offset by an increase in the contract CTC program.

National Institute of Corrections

The next item, Mr. Chairman, is the request for the National Institute of Corrections. We are requesting $11,771,000 and 30 positions in 1982 to continue the work of this small but vital organization. No additional positions are requested.

Of the $1,877,000 increase requested, $984,000 is for uncontrollable items including mandatory increases in wages and services procured and cost

escalation. The remaining $893,000 will be used to increase training and technical assistance to help state and local agencies improve their correctional practices. Assistance is focused primarily on classification, security, resource management, overcrowding and compliance with standards and court orders.

Buildings and Facilities

For Buildings and Facilities, we are requesting $13,731,000 and 25 positions for 1982. No new facilities construction projects are proposed. We are, however, requesting an increase of $7,771,000 for modernization and repair of existing facilities. Included in this amount is $696,000 to cover escalation in the costs of construction supplies and materials. The remaining $7,075,000 is requested to undertake important energy conservation projects at six institutions ($2.125,000); begin the conversion of the Leavenworth Penitentiary to a modern correctional facility ($1,700,000); and undertake or complete essential utilities rehabilitation and improvements to existing structures ($3,250,000). A decrease of 10 positions from the base program is reflected to more closely align positions with actual employment experience.

Federal Prison Industries, Inc.

For 1982 we are requesting 793 positions for Federal Prison Industries, Inc., a decrease of 115 positions from 1981. A decrease of 77 positions is related to the closing out of industrial programs at the Atlanta Penitentiary. An additional reduction of 50 positions is related to the Administration's program to reduce Federal employment.

Partially offsetting the reduction is a requested increase of 12 positions in 1982. Seven of these positions are requested to upgrade quality control at several institution factories to eliminate production deficiencies; two positions are requested to implement the Corporation's conversion from a manual to an automated management information system; and three positions are requested to upgrade the marketing and design programs and strengthen the internal audit program.

Commissary Operations

The last item, Mr. Chairman, is a request for one additional Commissary position in 1982 which will be used at the new Federal Detention Center in Tucson, Arizona. This will increase the total number of positions authorized to 81.

This concludes my formal statement, Mr. Chairman.

BUDGET REQUEST

Mr. CARLSON. Thank you, Mr. Chairman.

I appreciate the opportunity and would like to have the statement submitted for the record and summarized very briefly.

As you will note, we are requesting an amended total of $383,784,000 and 9,851 positions for 1982. This represents an increase of $21,916,000 and a decrease of 362 positions from the anticipated current year levels.

Unlike prison populations in most of the States, the Federal prison population has decreased during the last 3 years. After reaching an all-time high of 30,400 in August 1977, the inmate population has declined to a current level of 24,200. This total includes 1,750 Cuban detainees who have been identified by the Immigration and Naturalization Service as having significant criminal records. By the end of this month, we plan to have most of the Cubans housed in a single facility—the U.S. penitentiary, Atlanta, Ga.

The primary reason for the reduction in our prison population has been the shift of the prosecution priorities in terms of the Department of Justice. As you know, they have focused on white collar and organized crime and public corruption cases. At the same time, there has been a decrease in the number of bank robbery commitments by the Federal courts. We believe that the decline in inmate population has bottomed out. Criminal filings by U.S. attorneys across the country have shown an increase in the recent months and we anticipate that if this trend continues the population will begin to rise again in the very near future.

U.S. PENITENTIARY, MCNEIL ISLAND, WASH.

As you recall, we had planned to close the U.S. Penitentiary at McNeil Island, Wash., last October 1, 1980. We were on schedule with that plan until the U.S. District Court in the Western District of Washington issued a restraining order that required us to maintain the institution for approximately 170 Cuban detainees. Those Cubans were transferred to the U.S. Penitentiary in Atlanta, after the restraining order was lifted. The institution at McNeil Island is now being operated by the Bureau under contract with the State of Washington to house their offenders.

The State has a very critical problem of overcrowding and we have agreed to maintain the facility for them until July 1 on a reimbursible basis. Effective July 1 of this year, the State will take over the institution and operate it with their staff.

U.S. PENITENTIARY, ATLANTA, GA.

I commented earlier on the 1,750 Cuban detainees. They are now being transferred to the U.S. Penitentiary, Atlanta. So that we will have all the Cuban detainees in one institution. That may impact in the future on our plans to close the Atlanta institution. As you may recall, the Department's 1980 Authorization Act orders us to close the facility by September 1984. However, the uncertainty that remains with the Cubans has caused us to at least reconsider that closing date.

In terms of the budget for the salaries and expenses appropriation, we are asking for a few program increases. First of all, we propose to

open the Federal Detention Center in Tucson, Ariz., to replace a similar facility in Florence, some 60 miles away. In addition, we are asking for funds to increase our support from the Justice Data Center. We are also requesting an increase in funds to provide medical services for offenders.

Program reductions more than offset those increases. We plan to close our farming operations, cancel the planned expansion of the Federal Prison Camp at Boron, Calif., and reduce staff in areas such as education and unit management. We will also close the remaining Bureau of Prisons-operated Community Treatment Centers and utilize, exclusively, contract facilities for the halfway houses around the country.

Those reductions total $6.6 million and 266 positions. While they are significant, I believe we can continue to maintain all essential programs with minimal impact on our daily operations.

NATIONAL INSTITUTE OF CORRECTIONS

For the National Institute of Corrections, we are requesting a $1.8 million increase and no additional positions. This is a very small but, I think, important agency. It provides technical assistance and training assistance to help State and local agencies across the country improve their correctional practices.

BUILDINGS AND FACILITIES

For buildings and facilities, we are requesting no new funds for additional construction. The largest single project we are requesting is $1.7 million, which will be used for the first phase of the long-range plan to modernize the U.S. Penitentiary in Leavenworth, Kans.

FEDERAL PRISON INDUSTRIES

For Federal Prison Industries, we are requesting a decrease of 115 positions; 77 of those will come from the closing of Atlanta and 50 positions will be reduced in the production area.

That concludes my very brief summary, Mr Chairman. I will be pleased to answer any questions you may have.

Senator WEICKER. $4,385,000 is being deferred from the Prison System to offset INS expenses. At the same time, we have a pay supplemental of $11.9 million for the Prison System. Why weren't these funds used to offset the supplemental?

Mr. ROPER. Mr. Chairman, the basic guidance we had from OMB this year was to use any savings that we had to offset program supplementals throughout the Department and then once those were satisfied, to apply the remaining savings against an organization's pay supplemental, except for one area. That was the reduction that the President requested in equipment and consultant services, those savings were applied against the pay supplemental request of each organization.

Senator WEICKER. So in other words, this was at the instruction of OMB?

Mr. ROPER. Yes, sir.

Senator WEICKER. The Public Health Service has provided personnel and other support for the Bureau's medical programs. Will the reductions in the Public Health Service in any way affect your program?

Mr. CARLSON. We discovered that only recently. As you know, the funds are in our budget. However, there was a decrease in the Public Health Service budget. We are trying to negotiate now with OMB to see if we can't have that restored. It would mean no additional funds as far as the taxpayers are concerned, but we do believe the Public Health Service provides more adequate medical and dental care than we can provide through existing civil service physicians and dentists.

Senator WEICKER. In other words, what we are saying here is we have cuts in both areas?

Mr. CARLSON. No, sir. The Public Health Service positions were cut from the PHS budget.

Senator WEICKER. I understand that. That was cut?

Mr. CARLSON. That is right.

Senator WEICKER. By the same token, how many positions in your budget were cut or do you have in positions that relate to this particular activity?

Mr. CARLSON. No; the 112 positions are PHS positions which are funded by the Bureau of Prisons because they provide medical services in our institutions.

Senator WEICKER. So this is a matter of negotiation between you and the Public Health Service?

Mr. CARLSON. That is right, through the Office of Management and Budget.

CUBAN DETAINEES

Senator WEICKER. The request for a $4.6 million supplemental for housing Cuban and Haitian refugees has been withdrawn.

What was the total cost to the prison system for housing these refugees?

Mr. CARLSON. We estimate that on an annual basis, approximately $13 million is required to house the Cubans in our custody.

Senator WEICKER. Haitians?

Mr. CARLSON. The Haitians are not included in that figure. I believe they are a very small number of the total.

Senator WEICKER. What changes have been made in plans with respect to closing McNeil Island and the Atlanta facilities?

Mr. CARLSON. As we indicated, we were delayed in closing the facility because of the restraining order from the U.S. District Court in the Western District of Washington. That order has now been lifted. The facility will be turned over to the State of Washington effective July 1, 1980.

With respect to Atlanta, I really cannot give you an answer. The Cuban situation is an unknown quantity to us. It depends on how long we must maintain the Cubans in our custody.

Senator WEICKER. Just out of curiosity, how do we know the criminal records of these people? Obviously they don't arrive here with a manilla envelope under their arm. How is this accomplished?

Mr. CARLSON. Senator, I was present when the first few were brought into our custody. The best means for identifying them as prisoners was the fact they were wearing prison uniforms from their native country. Other information was received from intelligence sources, I suspect, that identified the particular individuals.

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Senator WEICKER. The Bureau plans to close all eight farm operations in 1982. According to your January justification, the value of food produced is $4.9 million. Your current justification indicates savings of only $432,000—associated with salaries. What is the cost of these operations?

Mr. CARLSON. Senator Weicker, the budget figure is in error. We have had a study done by one of our management interns which indicated that the benefits were grossly overstated to the tune of about $1 million. The actual value of farm products is $3.8 million compared to costs of $4.3 million. So we feel that without question the farms are not a profitable operation. As a result, they will be closed. Most mental hospitals around the country, for many years, had a farm adjacent to the mental hospital. They experienced the same phenomena. You can buy food cheaper than you can raise it for yourself.

Senator WEICKER. Is there any rehabilitation benefit derived from this type of activity?

Mr. CARLSON. There may be some. But most of our inmates are from urban areas, who will never return to a farming area. I question the value of an inmate from the inner city working on a farm.

Senator WEICKER. How did you come upon the new figures here? Was this something you did on your own initiative?

Mr. CARLSON. This was done on our initiative. We followed up with our study and it indicated the benefits had been overstated.

Senator WEICKER. What are you going to do with these farms?

Mr. CARLSON. We are still studying that operation. It is possible we may go to a very limited grazing operation to produce some beef, but which will require virtually no manpower.

FEDERAL COMMUNITY TREATMENT CENTERS

Senator WEICKER. The budget proposes closing all eight Federal community treatment centers. Savings are estimated at $1.6 million. The reduction anticipates that program objectives can be met through contracts with other agencies. Yet, you are also reducing the amount provided for contract treatment centers. Is this realistic?

Mr. CARLSON. Senator Weicker, we believe the $27 million we have asked for in 1982 will be sufficient to take care of all the Federal inmates who need that service. The number of inmates being released has declined because our general population has declined. Our projections are that we will be able to maintain the program at a sufficient level.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. There are other questions which will be submitted to you for response for the record.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Bureau of Prisons and Federal Prison Industries

Federal legislation (46 Stat. 391) requires that all inmates be provided meaningful work opportunities which provide knowledge and skills to enhance their potential for employment upon release. Many years have passed since this legislation was enacted. Does the Bureau feel that the legislative requirements are still appropriate? If not, what are the Bureau's suggested changes?

The provisions of Federal legislation are as appropriate today as when they were passed. This legislation (46 Stat. 391) requires that all inmates be provided meaningful work opportunities which provide knowledge and skills to enhance their employment upon release.

The definition of "meaningful work opportunities" is often debated; the American Correctional Association Standards for adult correctional institutions and the recently issued Attorney General's Federal Standards for Prisons and Jails provide that such work programs offer full-time and genuine employment for all inmates. Does the Bureau view these standards as reasonably obtainable? Also, what progress has been made toward their achievement?

The Bureau agrees with and follows both the ACA Standards for adult correctional institutions and the Attorney General's Federal Standards for Prisons and Jails. All ten Bureau institutions accredited to date are in compliance with the standards for work programs.

In accordance with Federal legislation (46 Stat. 391), it is the Bureau's policy to assign all able-bodied inmates to some work or other structured activity. Most inmates are assigned to either institutional work details or prison industries (UNICOR). What factors determine the allocations of available inmates between these activities?

Allocations of available inmates between institutional work details and industries (UNICOR) are determined, both by institution need and by inmate interest. The assignment of an inmate to industries is at his request, and it is the practice of the Bureau to give all inmates interested in working in industries an assignment once they have completed certain required assignments, e.g., orientation and basic education.

A prior GAO report, "Correctional Institutions Can Do More To Improve The Employability of Offenders" dated February 6, 1979, pointed out that Federal correctional institutions need to improve organization and management of work programs in order to better prepare inmates for employment upon release. What action has the Bureau taken to enhance offender employability?

The employability of inmates upon release has been enhanced through a heavy emphasis on industrial apprenticeship programs. During 1979 and 1980, UNICOR added 23 new apprenticeship programs at 10 locations, bringing the total to 48 programs. A goal is being pursued to have at least one apprenticeship program at every location with industries by December 1981.

In addition to the apprenticeship programs available through UNICOR, the Bureau offers through its vocational training program 249 apprenticeship programs at 31 institutions providing training in 75 trade areas including auto mechanics, welding, medical and dental technology, computer programming and masonry. Each program was recently approved and registered by the Department of Labor's Bureau of Apprenticeship and Training.

The Congress and others familiar with correctional institutions have often expressed concern about potential problems associated with inmate idleness. To what extent has inmate idleness contributed to violent and destructive actions within Federal and State prisons?

Inmate idleness can lead to destructive behavior and increase opportunities for incidents of violence.

The Bureau has not completed any studies which directly relate inmate idleness to violent and destructive behavior but we recently began a study into misconduct of Youth Corrections Act (YCA) offenders.

Another method of providing inmates employment opportunities is to permit inmates to work in the outside community on work release and furlough programs. To what extent has the Bureau used such programs and does it plan to expand the number of inmates permitted to participate in such programs? Does the Bureau require inmates to return a portion of their wages to defray costs for room and board? If so, what portion of their wages is obtained and how much has the Bureau collected during fiscal year 1980 and 1981? Is the money returned to the Treasury or used as part of the Bureau's appropriation?

Although several institutions maintain small work release programs, the Bureau does not plan to expand these programs because of the large variety of programs available within the institutions and because of the substantial expansion in recent years, in inmate participation in community treatment programs prior to release. Currently, nearly 50 percent of all inmates are transferred to community treatment centers (CTC's) for the last 100 or 120 days of their sentence to gain work experience and employment and planning assistance for their return to the community.

In Federal CTC's, offenders are requested to return $2 per day of their wages to help defray costs. Waivers to this requirement, however, are frequently authorized on the basis of hardship. The money received is returned to the Treasury. Inmates in some contract CTC facilities return part of their earnings as a requirement of the contract. This usually occurs in contracts with states where state law requires such repayment. In this situation the money returned applies to a reduction in contract costs.

In fiscal year 1980, $54,318 of inmate wages was returned to the Treasury. Thus far in 1981, $25,092 has been returned.

Institutional Details

The Bureau makes extensive use of inmates to preform daily tasks required to operate and maintain its institutions. What priority does this function have with other programs operated by the Bureau such as education, vocational training, and prison industries?

As mentioned previously, Bureau policy requires that all inmates have a work assignment to insure that they are contructively occupied. Although participation in education, and vocational training programs is voluntary, this involvement, generally, would take precedence over work assignments. Certain work assignments, e.g., food services, have fixed time schedules and require other program involvement to be scheduled around the work assignment. Many work assignments, however, are sufficiently flexible to be scheduled around education and training programs. The Bureau strongly supports and encourages inmates to increase their education and to develop work skills through vocational training.

In order to teach inmates basic work habits and responsibilities necessary for successful outside employment and to maximize manpower available for industrial assignments, it is important that institutions assign only those inmates actually needed to prison institutional tasks. Has the Bureau identified the minimum number of inmates necessary for performing institutional tasks? If so, what criteria was used, and did the criteria assume that inmates would be productive for approximately 8 hours a day? Also, how does the Bureau assure that facilities staff institutional details at minimum levels?

An inmate manpower study was conducted in the summer of 1979, to identify the minimum number of inmates needed to carry on general maintenance assignments with a seven and one-half hour day specified as part of the criteria. At that time it was indicated that approximately 31 percent of the institution population could be made available for employment in industries when institutions were at their physical capacity. Since 1979, conditions have changed, as addressed below.

Decisions regarding the number of inmates required for a particular assignment are made by the work foreman in charge, and vary depending on the nature of the assignment and skills of the inmate workforce available. Frequently, inmates lack the necessary or desirable skills for some tasks, in which case minimum staffing standards might be compromised. The expertise, however, rests with the foreman who is best qualified to make the decisions matching manpower and skills available with the work to be performed.

The Congress requested the Department of Justice to review prison industry operations. In responding, Justice stated that the Bureau's objective was to reduce the number of inmates assigned to institutional maintenance and operations by approximately 10 percent. What progress has been made on this goal that could be increased in order to make more inmates available for work in the industries?

The goal was for an average, systemwide reduction in the number of inmates assigned to institution maintenance and operations. Since the report was made, circumstances have changed which make this goal unrealistically high.

Four penitentiaries, all with high percentages of UNICOR inmate employment in 1979, have been affected. McNeil Island and Atlanta industries have been closed. Leavenworth's population has been reduced by nearly one-half. Marion's industries have been closed.

In addition, six new correctional facilities have been activated since the report was made to Congress. These facilities are the Federal Correctional Institutions at Bastrop, Texas, Otisville and Ray Brook, New York and Talladega, Alabama and the Federal Camps at Big Spring, Texas, and Boron, California. Each location requires similar institutional maintenance and operation tasks to be performed with inmate complements. At several of these new locations, inmate population are lower than previously expected, resulting in large percentages of those inmate populations being assigned to institutional maintenance and operations.

Since the study of inmate manpower utilization in 1979, the Bureau has tried to define more clearly the number of inmates actually available for any assignments—the "working population." This number has been formulated by subtracting from the total population the number of inmates who are (1) unsentenced, (2) in a holdover status (in transit), and (3) newly committed and still being processed. Using the working population as the denominator, UNICOR's employment of 5,558 inmates (on January 31, 1981) was 30.5 percent.

How do the optimal and actual institutional staffing levels at Federal correctional facilities compare with those of similar tasks performed by other government agencies and the private sector? If the Bureau's optimal staffing levels are greater, what are the reasons and what plans does the Bureau have to be more productive in maintaining its correctional facilities?

Although the Bureau has no statistical data to make a comparative analysis of work detail staffing levels in other government agencies and the private sector, we believe that for any given task, the number of inmates involved would be comparable to the number used in similar tasks in the private sector and other Federal agencies.

The Bureau acknowledges (see preceding response) that staffing standards may occasionally be compromised because we haven't the convenience of hiring to match skill demands. We try to do the best with the limited inmate skills we have and hope that through experience, the inmates' skills will be enhanced.

Considering the significant decrease in inmate population over the past couple years, the fact that the number of institutions adequately maintained has increased, and the increased use of inmate labor to accomplish major renovation and rehabilitation projects, we believe the Bureau is nearly as productive as it can be in the use of inmate labor.

Prison Industries

Legislation (48 Stat. 1211) authorizing Federal prison industries requires that the industries be operated with a minimum impact on private industries. How has the Bureau defined acceptable levels of competition with the private sector? Does the Bureau feel that the legislative directive that they should minimize competition have a

chilling effect on its plans to expand prison industries? To what extent do industry and labor representatives participate with the Bureau in deciding which industries to operate and their production levels?

Acceptable levels of competition with the private sector vary with different industries. Product life, profitability, labor availability and complexity of manufacture are factors. Other factors include size of the total market—private and Federal—and consideration of such interests as small business and provisions for the blind and severely handicapped. The Federal Prison Industries has received very little in the nature of concerns expressed by or complaints from the private sector. While UNICOR supplies a major share of a few Federal products, e.g., mailbags for the Postal Service, most of UNICOR's share in other markets is small, as with data entry, drafting services, printing, furniture, and garments.

UNICOR's Board of Directors includes representatives from labor and industry, with whom Corporate officials meet regularly. In addition, local labor leaders are involved in the development of UNICOR apprenticeship programs, and efforts are underway to develop private industry advisory councils.

Legislation requires that Federal industry products be purchased by Federal agencies when they meet their needs. Has the Bureau encountered resistance by Federal agencies to purchase industry products? If so, have corrective actions been taken?

No significant resistance by Federal agencies to purchase UNICOR products has been encountered.

In 1979, the Bureau reported to the Congress that it planned to broaden its market base in terms of the type of products produced and the number of Federal customers. What progress has been made, and does the Bureau believe that ample Federal markets exist for expanding sales to effectively utilize all inmates that could be made available to industries? Does the Bureau believe that the expansion of its industries will increase its profits; by how much, and what are the Bureau's plans for use of the additional profits?

UNICOR has begun the manufacture of several new products in the past two years, including military plastic helmets, solid wood panels to replace particle board in furniture, and general purpose mail containers for the USPS. New customers include the TVA (safety shoes), SBA (Brochures), US Fish and Wildlife Service (signs), and military hospitals (textile products). It is believed that ample Federal markets exist for expanding UNICOR sales to effectively utilize any larger number of inmates made available. Expansion of sales will increase profits, by an average of approximately $2,800 per inmate per year. Additional profits will be used to pursue the goals of UNICOR's 5-year plan, including modernization, further diversification, improved quality assurance, better staff training, increased inmate incentives and expanded apprenticeship programs.

The President placed a moratorium on the purchase of office equipment and furniture by executive agencies. What is the potential impact of this action on Federal prison industries?

Because Federal agencies are permitted to purchase office furniture through UNICOR, we anticipate that the impact will be minimal.

How many inmates and what percentage of the total inmate population are assigned to prison industries? Is the number of inmates assigned determined by the potential market for industry products or are marketing efforts of industry products determined by the estimated number of inmates available to work in industries?

On January 31, 1981, 5,558 inmates were assigned to FPI. This represented 23 percent of the toal FPS population, 25.5 percent of the total population at institutions with industries, and 30.5 percent of the available "working population." UNICOR's marketing efforts are aimed at supplying adequate work for the estimated numbers of inmates available to work in industries.

What has been the Bureau's experience in using multiple shifts to employ additional inmates and what are its plans for using this technique to employ inmates and to increase productivity?

UNICOR has employed multiple shifts at a few institutions with success and will continue to do so in those instances where inmates availability exceeds the capacity of one shift. The technique, however, does have limited potential because of the present availability of inmates, the custodial needs of many institutions and the integrated scheduling of other programmatic or leisure time activities.

In order to employ as many inmates as possible, the Bureau has traditionally operated highly labor-intensive industries. Does the Bureau believe this approach is still reasonable for providing experience that will assist inmates in obtaining employment upon release in view of the high technology in private industry?

The 1979 Report to Congress on "The Status of Federal Prison Industries" pointed out (in Appendix III) that nearly 85 percent of the inmates employed by UNICOR were working in jobs for which significant growth in the private sector was forecast through 1985 by the Bureau of Labor Statistics. The use of "labor intensive" industries remains valid in a correctional setting if, as indicated, the growth of jobs is predicted to increase. The Federal Prison Industries is continuing its plan to modernize including updating machinery and equipment and production techniques.

Does the Bureau use production measurement techinques to encourage and reward inmates' efficiency and to create an industrial environment as much like outside communities as possible? How do inmate production levels compare with those of the private sector? What are the constraints to achieving higher productivity?

Many UNICOR factories compensate inmates through incentive pay plans tied to production measurement. All UNICOR operations are conducted in environments as much like outside industries as possible. Customers and other visitors to UNICOR factories compare inmate production levels favorably with those observed in the private sector. There are constraints which may limit UNICOR's productivity. The most evident are those associated with the custodial responsibility of UNICOR foremen which is in addition to their supervisory role. These constraints to achieving high productivity include the necessity for tool control, checking for contraband, and day-long accountability for inmates.

In 1979, the Bureau told the Congress its long-term goal was to modernize its industries to bring them up to the state-of-the-art of private industry. Does the Bureau anticipate that prison industry profits will be sufficient to carry out this plan? If not, what are the Bureau's plans for funding the modernization of its industries?

Modernization of UNICOR idustries will be funded from Corporate profits, which should be sufficient for anticipated needs. UNICOR is currently well into a comprehensive program of automating its business and operational information, and mechanizing certain factory processes. For example, modern equipment is being obtained to keep printing operations and brush factories current with the state-of-the-art. Manufacturing plants have been using the same equipment to produce goods to government specifications as their counterparts in the private sector, and plans to continue to update equipment as it becomes necessary.

Federal Assistance for State Prison Industries

Since 1976, LEAA has sponsored the Free Venture Program to assist selective states in establishing and operating prison industries as much like private businesses as possible. With the future demise of LEAA, what are the Department of Justice plans for continuing the Free Venture Program, or for operating similar programs? Has the Free Venture Program been reasonably successful in achieving its intended purpose?

The Free Venture Prison Industries Program has experienced significant success in the achievement of quantifiable objectives in the seven demonstration states and in modifying, generally, attitudes and perception regarding the role and value of prison industries as a component of modern prison administration.

The Department has no plans to continue to support the Free Venture Prison Industries Program following the phase out of LEAA. The LEAA has provided a thorough briefing to the National Institute of Corrections and to Bureau of Prisons. These Bureaus currently have the program under study.

The LEAA has also briefed the Department of Labor and the Department of Commerce. The Employment Standards Administration and the Employment Training Administration of the Department of Labor, which are favorably impressed with the program, but have not initiated plans to assume program support without legislative authority. The Technical Assistance Division of the Economic Development Administration of the Commerce Department gave no indication of support or non-support due to the uncertainties surrounding the future of the agency.

In 1979, the Congress passed Public Law 96-157--commonly referred to as the Percy Amendment--to exempt up to seven states from Federal prohibitions against selling prison made goods in the interstate and Federal markets. Preliminary information indicates that, while the states generally favor expanding markets for their prison products, most states predict difficulties in paying inmates wages comparable to private industry, coordinating their industrial operations with labor unions, and involving private industries in their operations, as required by the Amendment. What plans does the Department of

Justice have for implementing the Percy Amendment and especially for dealing with these potential problems?

Implementation of the provisions of Section 827, Prison Industry Enhancement, of the Justice Systems Improvement Act, commonly referred to as the Percy Amendment, was approved by the Administrator in February 1981.

Thirty-four states have indicated interest in becoming certified. One state, Kansas, was granted provisional certification in February 1981. LEAA has provided assistance to the states in preparing them to apply for certification. Funds for technical assistance grants will expire on October 1, 1981. The certification of not more than seven state projects will be completed by July 31, 1981.

In the opinion of many legislators (including Senator Charles H. Percy) and criminal justice professionals, the Prison Industry Enhancement (Section 827) provisions of the JSIA is the most significant legislation to effect the operation of prison industries in the past 50 years.

The successful achievements of the LEAA Free Venture Prison Industries program, accomplished in large part as a result of an aggressive technical assistance effort, is in our opinion, a major reason underlying the overwhelming level of state response to the certification program announcement.

The states of Kansas and Iowa sought certification in advance of the LEAA formal program announcement in order to benefit from the opportunity to market their products to the Federal Government. Kansas was granted provisional certification. Iowa was denied certification because its prison industries project did not pay salaries commensurate with the prevailing wage rate. The provision of LEAA technical assistance to both states was the major motivating force behind each state gaining access to the federal market.

The current availability of LEAA technical assistance will expire within 3 months following completion of the individual state's certification. Without the availability of technical assistance resources, it is our opinion that the act of LEAA certification will, alone, be of questionable value.

The Department has no plans to continue support of the "Percy Amendment" beyond the phase-out of LEAA.

Under the Percy Amendment, selected states will be allowed to sell their prison made products to Federal customers in competition with Bureau-operated industries. What is the expected impact on Bureau industry operations? Also, what would be the potential impact on the industries if all States were allowed to sell prison-made goods to Federal customers?

The provision that selected states are allowed to sell their prison made products to Federal customers in competition with Bureau-operated industries is not expected to have an impact on Federal Prison Industries. Furthermore, no significant potential impact is seen if the industries of all States were allowed to sell to Federal customers. These conclusions are based on (1) the fact that Federal agencies must purchase products available from Federal Prison Industries, (2) the Federal market is a large one of which Federal Prison Indus-

tries takes a very small share and (3) the introduction into the market of state products would be considered as normal competition for Federal contracts now provided by the private sector.

Because of fluctuations in inmate population and other factors, the Bureau is often unable to staff its industrial operations at optimal levels. State prisons, on the other hand, often have large numbers of inmates without work assignments. What consideration has been given to using State inmates to complement the Federal inmate work force at nearby Bureau industries? Also, what factors, if any, preclude such joint ventures?

Consideration has not been given to using state inmates to complement the Federal inmate work force. The employment of State inmates by Federal Prison Industries could be feasible if viewed only from the standpoint of providing industrial work assignments to them and maintaining industrial operations at optimal levels. The factor that currently precludes such joint ventures is that there is no authority to confine prisoners in federal prisons who are not legally in the custody of the Attorney General. Other factors that could preclude or complicate intermixing of state and federal inmates in an industry, are those of classification and security, provisions for custodial and work supervision, and the logistics of the daily transportation of state prisoners.

Questions Submitted by Senator Hollings

National Institute of Corrections

Last year at our mark up session there was discussion of the National Institute of Corrections. What would be the effect of eliminating the Institute?

The National Institute of Corrections is currently the only Federal agency providing leadership and support services to state and local corrections. At no time in this nation's history has crime been so serious or the problems facing corrections so critical. Over half of the nation's jails and prisons are seriously overcrowded. Thirty six states have their correctional systems under court order as being unconstitutional. The conditions of confinement in most jails and prisons are sub-standard, bordering on being inhumane and unsafe. To abolish the Federal Government's only support service to the state and local agencies responsible for 94 percent of all criminal offenders, would be to eliminate all the actual assistance given and destroy the leadership that now exists.

Specifically, the elimination of the National Institute of Corrections would remove the following support activities established by Congress and rendered to state and local corrections during FY 1980:

> Training. It would be necessary to abolish the National Academy for Corrections which has provided training opportunities to 3,700 administrators, managers, and agency trainers. Because individuals trained all have management or training responsibilities in their own agency there is a multiplier effect to the training that touches thousands of other corrections personnel.

Technical Assistance. Last year over 700 requests for technical assistance were filled. Such critical issues as locking devices for the New Hampshire State Prison to planning for the rehabilitation of the New Mexico Correctional System following the tragic riot, were among the requests. Responsive, non-bureaucratic assistance has been the hallmark of the Insitute's service to state and local governments.

Clearinghouse. The need for information is often the only help required by correctional agencies, but that assistance must be quick and accurate to be useful. During the past year, over 7,000 such requests were filled by the National Institute of Corrections' Information Center.

Program/Policy Development. The development by the Federal government of model programs and procedures for corrections has been of inestimable help during the past five years. State and local corrections do not have the research-evaluation capacity to carry out the necessary experimentation, nor do they have the resources necessary to initiate the programs without outside assistance. The National Institute of Corrections is making significant progress for corrections nationally by initiating policy and program development in the following areas:

1. Jail Operations
2. Standards and Accreditation
3. Classification Issues
4. Parole Guidelines
5. Overcrowding
6. Fire Safety
7. Crisis Control
8. Medical/Psychiatric Service Systems

Detailed descriptions of all activities set forth above can be provided if so desired.

In summary, if the National Institute of Corrections was eliminated, the field of corrections would lose a small, responsive and nonbureaucratic agency that has been of immeasurable assistance in improving state and local corrections.

Closure of Federal Penitentiaries

With the closure of McNeil Island and Atlanta, how many maximum security beds will the Bureau have and what is the current maximum security population?

After the closing of the McNeil Island and Atlanta Penitentiaries the remaining maximum security capacity will be 4,089 beds (security levels 5 and 6). The current maximum security population is 1,975.

Please supply for the record a chart displaying the beds available for each of the 6 inmate-security classifications at the end of 1979 and the number for each category to be available in 1982.

Summary of Inmate Population Level and Physical Capacity
FY 1980 and FY 1981*

(Institutional Based)

Security Level	Population	Capacity	Surplus/Deficit
FY 1980 Total	21,990	21,664	-325
FY 1982 Total	21,539	21,970	+431
FY 1980 Level One	6,238	5,277	-961
FY 1982 Level One	6,109	5,470	-639
FY 1980 Level Two	3,180	2,964	-216
FY 1982 Level Two	3,114	2,997	-117
FY 1980 Level Three	3,895	3,219	-676
FY 1982 Level Three	3,185	3,575	-240
FY 1980 Level Four	4,488	2,992	-1,496
FY 1982 Level Four	4,395	3,041	-1,354
FY 1980 Level Five/Six	2,016	4,886	+2,850
FY 1982 Level Five/Six	1,975	4,809	+2,834
FY 1980 All Other	2,173	2,346	+173
FY 1982 All Other	2,131	2,078	-53

*Excludes 1,750 Cuban detainees.

With regard to the $1,909,000 request to activate the new Tucson facility, why does it cost $56,000 to provide religious services; are you contracting for a bishop?

The amount in the budget is in error. It will cost $16,000 to provide contract religious services and purchase necessary supplies and equipment to support the program.

How much is it costing the U.S. taxpayers to provide room and board for the 1,514 Cuban criminals at Atlanta?

The costs for housing the Cuban detainees at Atlanta on an annualized basis is $13.3 million. This reflects a daily per capita cost of $22.80 based on an average daily population of 1,600.

What plans are there to deport the Cuban criminals?

The Department of State conducted consultations with Cuban officials in January 1981, which were to have included the issue of removing the criminals and other undesirables within the Cuban refugee population. We understand that the discussions were broken off by the Cuban officals. The Department of State would have knowledge of the current situation regarding any plans for deporting the Cuban criminals.

Last year Congress enacted several laws to cut off certain Social Security and Veterans Administration benefits to incarcerated persons. (P.L. 96-473 cutt off Social Security disability insurance and student benefits, P.L. 96-466 cut off V.A. educational benefits, P.L. 96-385 limited V.A. compensation payments.) Is the Bureau of

Prisons working with the Social Security Administration and the Veterans Administration to comply with these laws?

The Social Security Administration has requested the Bureau to provide them with inmates' social security numbers to identify those inmates who receive benefits. We are in the process of publishing in the Federal Register notification that we will routinely provide this information to the Social Security Administration. As soon as the notification is published and the required time elapses we will begin to provide this information.

To date the Bureau has received no request from the Veterans Administration for information on inmates receiving veterans benefits. Presumably, the Veterans Administration has appropriate administrative mechanisms to assure compliance with the laws.

SUBCOMMITTEE RECESS

Senator WEICKER. The subcommittee will stand in recess until 9:30 tomorrow.

[Whereupon, at 3:10 p.m., Tuesday, March 24, the subcommittee was recessed, to reconvene at 9:30 a.m., Wednesday, March 25.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

WEDNESDAY, MARCH 25, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room S-146, the Capitol, Hon. Lowell P. Weicker, Jr. (chairman) presiding.

Present: Senators Weicker, Inouye, and Bumpers.

DEPARTMENT OF COMMERCE

STATEMENT OF HON. MALCOLM BALDRIGE, SECRETARY

ACCOMPANIED BY:

CLIFFORD J. PARKER, ACTING ASSISTANT SECRETARY FOR ADMINISTRATION
NANCY A. RICHARDS, DIRECTOR, OFFICE OF BUDGET
GEORGE L. B. PRATT, ACTING DIRECTOR, OFFICE OF THE ASSOCIATE DEPUTY SECRETARY

OPENING REMARKS

Senator WEICKER. The subcommittee will come to order.

Our hearing this morning will focus on administration proposals to eliminate the Economic Development Administration and to significantly scale back the National Oceanic and Atmospheric Administration.

This morning, at this hearing, we will be hearing first from the Secretary of Commerce, Malcolm Baldrige, accompanied by Clifford Parker, Acting Assistant Secretary for Administration, and Nancy Richards, Director, Office of Budget.

EFFECTS OF ELIMINATING THE ECONOMIC DEVELOPMENT ADMINISTRATION

The central thesis underlying the administration's attitude toward the Economic Development Administration can be found on pages 4 through 10 of the February 18 document entitled, "Program for Economic Recovery." I quote a sample paragraph:

> Economic expansion and job creation in distressed areas will be stimulated through general tax, fiscal and regulatory measures, and more flexible community development support assistance.

This is, of course, the classic "rising tide lifts all boats" argument.

Economists can debate forever the macro effects of this supply-side policy—whether inflation will come down and capital investment go up. I don't wish to get into that today.

I do question the microeffects. If you eliminate EDA, UDAG, CDBG, et cetera—the so-called targeted economic development assistance programs—what will the economically distressed areas of our country do? They will be thrown into an enormous vacuum, at least until the rising tide lifts the remaining boats.

President Kennedy favored across-the-board supply-side tax cuts. But he also favored the Area Redevelopment Administration—EDA's forerunner—because he knew macropolicy was not enough.

This administration would pull the plug completely on one of the best of the targeted programs and leave many regions of the United States waiting for the macroeffects to trickle down.

EFFECTS OF CUTTING THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

It is equally ill advised to undermine NOAA, an agency with vast responsibilities in such diverse areas as fisheries, seabed mining, coastal zone management, oceanographic research, weather research and forecasting, satellite operations, marine mammals, mapping and charting and ocean engineering—to name a few.

As our Nation increases its exploration and use of marine resources, NOAA's responsibilities will grow. Yet the Reagan administration has earmarked NOAA for cuts totaling $250 million, or 25 percent in fiscal year 1982 alone. These cuts will, in my opinion, have a devastating effect on the agency.

In addition, the administration's proposal to cut NOAA personnel by 770 would bring the agency's total work force down to less than 12,000—500 below the personnel level it began within 1971.

This subcommittee has worked long hours to insure that NOAA be given the resources it needs to carry out its responsibilities. I for one do not intend to silently witness its demise.

GENERAL REMARKS

Prior to receiving any opening statement from Senator Inouye, I want to say this: That I am delighted that Mac Baldrige is the Secretary of Commerce. I have nothing but the highest respect for him, both in terms of his mental capacity, in terms of his heart, and his propensity for very, very hard work. I predict that Commerce will achieve its greatest heights under his leadership.

Having said that, I also expect to work closely on the needs of the other matters as they arise. I think this is a good time to have an exchange of views on the substance of what it is that various agencies do.

Mr. Stockman and his people have done their concentrating on the figures and bottom line. The job of this committee is to get into matters of substance so we make sure that the investments that this Nation makes are not the boondoggles, waste, and fraud—terms that are sometimes applied to other aspects of the budget.

Senator Inouye?

Senator INOUYE. You have just given my speech.
Senator WEICKER. I doubt that. [Laughter.]
Senator INOUYE. I join you in welcoming Secretary Baldrige.
Senator WEICKER. Mr. Secretary?

INTRODUCTION TO DEPARTMENT OF COMMERCE BUDGET

Secretary BALDRIGE. I am asking your support today for measures to reduce the 1981 request submitted by our predecessor by $466 million to $2.4 billion. We are proposing to reduce the 1982 amount by $1 billion to a new total of $2.1 billion.

Changes like these are going to be necessary if we are to slow the growth of Government spending to the degree the President has pledged. If it is necessary to reduce social programs affecting individuals, then programs helping business must also take cuts. The budget still supports the essential Commerce roles in trade, economic policy development, domestic business support, and natural resources.

I understand the macroeconomic versus microeconomic theory, Senator, but I think that you and I have been out in the street, have met with the people, and know that the small business employer and the wage earner are most concerned today about inflation and interest rates. They are hurting the job-creating capacity of the country more than any other two policies. You cannot get at them without reducing the budget deficits and helping the problem of Government crowding out the private sector money markets.

Fully 47 percent of the Department's pending 1982 budget, or $1.3 billion, was devoted to subsidies and other forms of financial assistance. When you add to this $1.9 billion in the form of loan and guarantee authority, you see how substantial the Department's intervention in the workings of State and local governments and the economy had become.

This administration has decided to reduce the role and size of the Federal Government and to return decisionmaking to other levels of Government and business where such a course makes sense.

The impact of these measures and the other parts of the President's plan on economic growth and productivity should far outweigh the loss of individual financial assistance programs.

DEPARTMENT OF COMMERCE PROPOSED BUDGET REDUCTIONS

Our intention to eliminate the majority of the programs of the Economic Development Administration—EDA—and to accelerate the phaseout of the eight Regional Development Commissions was announced by the President on February 18.

We are proposing to rescind $342 million in EDA funds in 1981, leaving a balance of $282 million. In 1982, $50 million is proposed to monitor existing projects and to cover any defaults. We would retain one EDA program, trade adjustment assistance, at its current level of $53.4 million in direct assistance and $42.5 million in loan guarantee authority.

As part of the budget reductions, we are accelerating the previous administration's proposal to terminate the Regional Commissions. A rescission of $21 million from 1981 funds is being proposed.

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The National Oceanic and Atmospheric Administration—NOAA—has been administering several grant and loan programs. We have reviewed all of these in the light of the current economic situation and are proposing to eliminate them. Together these amount to reductions of $45 and $91 million from the Carter budgets for 1981 and 1982.

New funding for the coastal energy impact program had already been eliminated from the Carter budget for 1982. We are proposing to rescind the balance of $40 million remaining in the loan fund in 1981.

We are further proposing to terminate the coastal zone management State administration program in 1982 for a savings of $37 million. States covering 78 percent of the coastline have already received up to 7 years of Federal support.

The Sea Grant College programs are primarily directed toward local, State, and regional needs. We are, therefore, proposing to terminate Federal funding in 1982 and to turn the responsibility for supporting these programs over to the States and private sources of funding. This course will save $37 million.

NOAA has been assisting fisheries development through two categorical State grant programs and grants to assist development of the fishing industry. We are proposing to eliminate the two State grant programs and greatly reduce fishery development grants for a total savings of $17 million in 1982.

The substantial shipbuilding component of the defense buildup and the need to impose fiscal restraint have caused the administration to examine maritime subsidies. A full review of such issues as increased commercial participation in military support functions and the impact of new tax policies on competitiveness will be undertaken.

This includes studying how the Merchant Marine can help the Navy.

In the interim, we have decided to stretch the 1981 shipbuilding subsidy program over 2 years. We will not require the $107 million in new budget authority contained in the 1982 Carter budget.

The public telecommunications facilities program has been providing grants for planning, and up to 75 percent of the cost of constructing public radio and television stations. The revised budget eliminates this program beginning in 1981 for a savings each year of $22 million. Nearly 93 percent of the population now has access to public television and 70 percent to radio.

ELIMINATION OF ADDITIONAL FUNDING FOR NEW INITIATIVES

When we reviewed the budget proposals which had been submitted in January, we found some worthwhile initiatives which nevertheless had to be reconsidered in terms of fiscal austerity.

Two of the largest initiatives were new satellite systems to be operated by NOAA. The National Oceanic Satellite System—NOSS—would have provided a 5-year demonstration of remote sensing of ocean characteristics. The land remote sensing system—LANDSAT—is designed to provide data for mineral and agricultural assessment and land-use planning.

Major additional funding for both of these systems has been eliminated in the President's budget revisions. The Commerce savings in 1982 will be $138 million.

The previous administration initiated a series of federally funded programs intended to foster industrial productivity and innovation—many of them under the direction of the newly created Office of Productivity, Technology, and Innovation—OPTI. We feel that this was a good initiative, but disagree with the implementation.

We plan to make improved productivity and innovation a major goal of the Department of Commerce but feel that this effort should be carried out by the National Bureau of Standards, which is a widely misunderstood agency. The Bureau currently has programs for automated manufacturing, metals processing, and reference data for the chemical industry. The private sector does not need grants and Federal aid. It needs a planning and coordinating mechanism along with technical support.

Consequently, we are proposing to eliminate both OPTI as a separate organization and its specific programs for a savings of $10.9 million in 1982. However, I am asking for an additional $1 million in the special initiatives fund for further exploration of productivity problems and solutions, and there are initiatives in the NBS budget which would provide measurements and standards for promising new technologies.

REDUCTION OF PERSONNEL AND OTHER OVERHEAD COSTS

One of the goals underlying the budget revisions is the reduction of personnel and other overhead costs. We are asking for your support of employment reductions of 4.8 and 8.3 percent from the personnel ceilings contained in the January budget for 1981 and 1982.

We have tried to provide some relief for the highest priority programs and balance the remaining reductions among other Commerce programs. Our responsibilities for international trade are still relatively new, and I wanted to preserve the flexibility to fill jobs in the Foreign Commercial Service and Export Administration. We have also restored the U.S. Travel Service to a level which will allow it to carry out its basic promotional mission. The other area to which we have given priority is the Patent and Trademark Office—PTO.

That is also vital to our productivity programs.

Personnel cuts throughout the rest of the Department will affect all programs. They will produce savings of $5 million in 1981 and $36 million in 1982. In some circumstances, reductions-in-force—RIF's—will be necessary.

INCREASED 1981 AND 1982 REQUIREMENTS

I have chosen to emphasize the reductions in the Commerce budgets for 1981 and 1982 in these remarks because I want you to understand the impact of the President's goals. There are increases in our request, and the fact that they have survived the budget review should indicate their high priority.

We remain fully committed to successful completion of the 1980 decennial census. Because of cost increases arising from lawsuits and other uncontrollable factors, 1981 requirements for the census have increased by the $23 million which you see in our 1981 supplemental. Without these funds, further processing of decennial data will have to stop.

The total cost of the October 1980 pay increase for the Department is $78 million. We are proposing to absorb nearly 60 percent of the cost in 1981. The $33 million supplemental request is essential; there is no additional flexibility to absorb these costs.

You will find increases in 1982 as well. They include $13 million for development of a new generation of weather technology which will be necessary to improve forecasting and achieve future personnel reductions. Five of the computer systems in the Department are reaching the end of their useful life at 8 to 9 years. We are requesting $26.8 million to begin their replacement.

These are the major changes in the programs and budgets of the Department. I know you will want to discuss the specific reductions in greater detail with the individual program managers in later hearings.

My colleagues and I will be happy to respond to your questions this morning.

PREPARED STATEMENT

Senator WEICKER. We will include your prepared statement in the record.

[The statement follows:]

STATEMENT OF MALCOLM BALDRIGE

Mr. Chairman and Members of the Committee, I am pleased to appear before you today to discuss this Administration's proposals for the 1981 and 1982 budgets of the Department of Commerce. You are already familiar with the broad outlines of the President's plan for economic recovery. I heartily endorse these goals. The President's plan will reduce inflation and interest rates, which will do far more for the economy than any of the Federal programs being reduced or eliminated.

Reducing Federal expenditures is one of the four cornerstones of the President's program. I am asking your support today for measures which would reduce the 1981 request submitted in January by $466 million to $2.4 billion. We are proposing to reduce the 1982 amount by $1 billion to a new total of $2.1 billion. This revised budget total for 1982 is nearly 33 percent below the Carter budget for 1982. Changes like these are necessary if we are to slow the growth of Government spending to the degree the President has pledged. If it is necessary to reduce social programs affecting individuals, then programs helping business must also take cuts. I think you will find that the budget still supports the essential Commerce roles in trade, economic policy development, domestic business support and natural resources.

The Administration has used eight basic criteria to identify areas for reduction. Several of these have been particularly applicable to Commerce programs:

- o Apply sound criteria to economic subsidy programs;
- o Impose fiscal restraint on other programs of national interest;
- o Reduce overhead and personnel costs of the Federal Government.

Financial Assistance

We found that fully 47 percent of the Department's pending 1982 budget, or $1.3 billion, was devoted to subsidies and other forms of financial assistance. When you add to this $1.9 billion

in the form of loan and mortgage guarantee authority, you see how substantial the Department's intervention in the workings of State and local governments and the economy had become. Each of these programs may have been carefully designed at its inception to meet a specific need. But it is the cumulative effect of all these Commerce programs and simila. forms of subsidies throughout the Federal Government which has contributed to the economic crisis we face today.

This Administration has decided to reduce the role and size of the Federal Government and to return decisionmaking to other levels of government and to business where such a course makes sense. The positive impact of these measures and the other parts of the President's plan on economic growth and productivity should far outweigh the loss of individual financial assistance programs like those of the Department.

Economic and Regional Development

Our intention to eliminate the majority of the programs of the Economic Development Administration (EDA) and to accelerate the phaseout of the eight Regional development commissions was first announced by the President on February 18.

The original purpose of EDA was to provide special financial assistance to those areas of the country which had been bypassed by general economic prosperity. Now the program has evolved to the point where 80 percent of the country has been identified as economically distressed. This is not EDA's fault. Attempts to tighten up the program's legislative base have not been successful -- in fact, more programs and funding authority have been added.

We are proposing to rescind $342 million in 1981, leaving a balance of $282 million. In 1982, $50 million is proposed to monitor existing projects and to cover any defaults. We would retain one EDA program, trade adjustment assistance. It is necessary to continue to provide help to those businesses which have been hurt by imports. Trade adjustment assistance is the only form of the financial assistance they receive. We are

proposing to maintain the program at its current level of $53.4 million in direct assistance and $42.5 million in loan guarantee authority. Responsibility for administering the program would be transferred to the International Trade Administration (ITA) in 1982.

As part of the budget reductions, we are accelerating the previous Administration's proposal to terminate the regional commissions. A rescission of $21 million from 1981 funds is being proposed. Like the previous Administration, we believe that it is not clear that Federal involvement in these programs has resulted in truly regional development.

Financial Assistance in NOAA

The National Oceanic and Atmospheric Administration (NOAA) has been administering several grant and loan programs designed to meet various needs for marine research, fisheries development, and coastal management and development. We have reviewed all of these in the light of the current economic situation and are proposing to eliminate them. Together these bring reductions of $45 million and $91 million from the Carter budgets for 1981 and 1982.

New funding for the Coastal Energy Impact Program had already been eliminated from the Carter budget for 1982. We agree with the conclusions of the previous Administration that offshore energy development impacts have not been significant. We are proposing to take those conclusions one step further by rescinding the balance of $40 million remaining in the loan fund in 1981.

We are further proposing to terminate the Coastal Zone Management state administration program in 1982 for a savings of $37 million. States covering 78 percent of the coastline will have already received up to seven years of Federal support for developing, implementing and administering their Coastal Zone Management programs. Any further activities should be financed by the states if they feel it is worth the investment.

Since its inception in 1966, the Sea Grant program has funded marine research, education and extension services. Forty-six institutions are currently receiving support. We have concluded that the program has largely met its major original intent of creating marine expertise across the country. The Sea Grant College programs are primarily directed toward local, State and regional needs. We are, therefore, proposing to terminate Federal funding in 1982 and to turn the responsibility for supporting these programs over to the states and private sources of funding. This course will save $37 million from the Carter budget.

NOAA has been assisting fisheries development through two categorical state grant programs and grants to assist development of the fishing industry. We are proposing to eliminate the two state grant programs and greatly reduce fishery development grants for a total savings of $17 million in 1982. The programs currently support projects to conserve and develop anadromous and other commercial fishery resources. Their elimination will not prevent the fishing industry from developing where economic opportunity exists. If there are state-level needs and potential benefits, the states themselves are free to pick up the activities.

Maritime Aids

The Federal Government provides direct subsidies both for construction and for operation of a significant part of the U.S. flag merchant fleet in the foreign trade. The President remains committed to a strong naval-maritime program to provide emergency sealift and preserve the country's shipbuilding mobilization base. Nevertheless, the substantial shipbuilding component of the defense buildup and the need to impose fiscal restraint have caused the Administration to examine maritime subsidies. A full review of such issues as increased commercial participation in military support functions and the impact of new tax policies on competitiveness will be undertaken. In the interim, we have decided to stretch the 1981 shipbuilding subsidy program over two

years. The $245 million available at the beginning of 1981 will allow funding of four new ships as well as trade-ins and change orders. We will not require the $107 million in new budget authority contained in the 1982 Carter budget. No changes are proposed to the long-term operating differential subsidy contracts at this time.

Public Telecommunications Facilities Grants

The Public Telecommunications Facilities program administered by the National Telecommunications and Information Administration has been providing grants for planning and up to 75 percent of the cost of constructing public radio and television stations. The revised budget eliminates this program beginning in 1981 for a savings each year of $22 million. Nearly 93 percent of the population now has access to public television and 70 percent to radio. Thus, the program's main goal has been essentially met. Neither permanent Federal support for replacement of broadcasting equipment nor further extension of coverage is appropriate in a period of fiscal restraint.

Lower Priority Programs of National Interest

These are the changes in economic subsidies and other changes to financial assistance which we are proposing. The second criteria to which I referred at the outset was imposing fiscal constraint on programs of national interest. When we reviewed the budget proposals which had been submitted in January, we found some worthwhile initiatives which nevertheless had to be reconsidered in terms of fiscal austerity.

Satellite Systems

Two of the largest initiatives were new satellite systems to be operated by NOAA. The National Oceanic Satellite System (NOSS) would have provided a five-year operational demonstration of remote sensing of ocean characteristics. The land remote sensing system (LANDSAT) is designed to provide data for mineral and agricultural assessment and land-use planning. Major additional funding for both of these systems has been eliminated in the President's budget revisions. The Commerce savings in

1982 will be $138 million. I understand that the Navy, one of the three partners in the NOSS project, would continue to fund some ocean measurement research. The two LANDSAT satellite procurements already funded by NASA should provide data through 1988. The Department is recommending NOAA still take over operation of these two satellites beginning in 1983.

Productivity and Innovation

The previous Administration initiated a series of federally-funded programs intended to foster industrial productivity and innovation -- many of them under the direction of the newly created Office of Productivity, Technology and Innovation (OPTI). We feel that this was a good initiative but disagree with the implementation.

We plan to make improved productivity and innovation a major goal of the Department of Commerce but feel that this effort should be carried out by the National Bureau of Standards. The Bureau currently has program enhancements in automated manufacturing, metals processing and reference data for the chemical industry. The private sector does not need grants and federal aid. It needs a planning and coordinating mechanism along with technical support.

Consequently, we are proposing to eliminate both OPTI as a separate organization and its specific programs for a savings of $10.9 million in 1982. However, I am asking for an additional $1 million in the Special Initiatives Fund for further exploration of productivity problems and solutions, and there are initiatives in the NBS budget which would provide measurements and standards for promising new technologies.

Reducing Overhead and Personnel Costs

The third criteria which accounts for changes in the Commerce budget is the Administration's desire to reduce personnel and other overhead costs. Personnel and related costs were over 29 percent of the Department's January budget, second only to grants and other forms of financial assistance. We are asking for your support of employment reductions of 4.8 percent and 8.3 percent

from the personnel ceilings contained in the January budget for 1981 and 1982. These reductions are consistent with those planned for other civilian agencies.

In planning how to achieve these reductions, we have tried to provide some relief for the highest priority programs and to balance the remaining reductions among other Commerce programs. Our responsibilities for international trade are still relatively new, and I wanted to preserve the flexibility to fill jobs in the Foreign Commercial Service and Export Administration. We have also restored the United States Travel Service to a level which will allow it to carry out its basic promotional mission. The other area to which we have given priority is the Patent and Trademark Office (PTO). I agree with critics who say that both patent and trademark pendency are too high. Under the revised budget, PTO will hire the maximum number of examiners that can be absorbed in 1981 once the freeze is lifted. If you approve our 1982 request, they will add 130 additional patent and trademark personnel in that year. This additional hiring will mean decreased trademark pendency and a slower growth in patent pendency.

Personnel cuts throughout the rest of the Department will affect all programs. They will produce savings of $5 million in 1981 and $36 million in 1982. We hope that a substantial portion will be accomplished by attrition. However, in some circumstances reductions-in-force (RIF) will be necessary.

Among the first actions of the President were a series of controls on overhead in the Federal Government, travel and the procurement of consulting services and equipment. The revised budget proposals also reflect savings from these measures, $8 million in 1981 and $12 million in 1982.

Increases in the 1981 and 1982 Budgets

I have chosen to emphasize the reductions in the Commerce budgets for 1981 and 1982 in these remarks because I want you to understand the impact of the President's goals. There are

increases in our request, and the fact that they have survived the budget review should indicate their high priority.

The 1981 proposal contains $64.5 million in supplementals. Let me highlight two of them. We remain fully committed to successful completion of the 1980 Decennial Census. Because of cost increases arising from lawsuits and other uncontrollable factors, 1981 requirements for the Census have increased by over $50 million. Through revised operating plans, this amount has been reduced to the $23 million which you see in our 1981 supplemental request. Without these funds, further processing of Decennial data will have to stop.

The total cost of the October 1980 pay increase for the Department is $78 million for 1981. We are proposing to absorb nearly 60 percent of the cost in 1981. The $33 million supplemental request is essential; there is no additional flexibility to absorb these costs without even further program reductions.

You will find increases in 1982 as well. They include $13 million for development of new generations of weather technology which will be necessary to improve forecasting and achieve future personnel reductions. Five of the computer systems in the Department are reaching the end of their useful life at 8-9 years. We are requesting $26.8 million to begin their replacement. This investment may seem a large one. Let me assure you that one of our major management objectives is to achieve maximum consolidation and centralization of all administrative and support functions. We will be exploring every opportunity to hold down the costs of major procurements such as these.

These are the major changes in the programs and budgets of the Department. I know you will want to discuss the specific reductions in greater detail with the individual program managers in later hearings.

My colleagues and I will be happy to respond to your questions this morning.

Senator WEICKER. Senator Inouye?

Senator INOUYE. Thank you, Mr. Chairman. I would like to talk about EDA.

According to estimates submitted by EDA, the average EDA cost for each permanent private sector job created or saved ranges from $662 to $3,789. The Reagan administration has stated that it costs $60,000 to $70,000 for each job created by EDA. How do you explain this discrepancy?

Secretary BALDRIGE. Senator, I have testified on this topic before. I don't think either one of them is right. The EDA estimate is the wrong way to go about it. It simply takes the EDA funds and divides them by the number of jobs that funding is associated with. It does not take into account the other moneys that have to go in to create those jobs, either from the private sector or in some cases from the States and cities. Just to take the EDA funds is an incorrect way to figure it. The total job cost has to be much higher. On the other hand, I think the OMB method of looking at that is too high. And I can't agree with that figure of $60,000.

Senator INOUYE. Here we are concerned about the cost to the Government, aren't we? What is the cost to the Government?

Secretary BALDRIGE. I don't think so, Senator.

I think if you are comparing the job helped by the Government to a private sector job, I think you have to compare the total cost of both.

Senator INOUYE. What is your estimate, sir?

Secretary BALDRIGE. My estimate would be somewhere in the $30,000 to $40,000 range. It costs the private sector perhaps $40,000 to $50,000 to create a job because you are taking into account industries that have a very high capital investment.

The average in manufacturing is perhaps $40,000 to $50,000. I think for the EDA kind of jobs, their lowest cost is $30,000 to $40,000 because they are usually lighter manufacturing with less capital investment—although that is not entirely the case, there is a higher percentage of it. That would be the cost if you consider all of the things that are completely necessary to create a job, not just a 1-year job, but a permanent ongoing kind of job.

Senator INOUYE. The President, when he addressed the Congress in the joint session, said that by eliminating EDA, you would get rid of a whole array of planners. According to EDA, they claim that they just have 35 planners. Do you have more than that?

Mr. PARKER. In addition to planners that are funded through EDA programs, we fund various districts across the country and also fund university projects and that sort of thing. So I don't have the total number.

Senator INOUYE. So you are including everyone.

Mr. PARKER. We can provide for the record the total number that are in the EDA support system.

[The information follows:]

PLANNERS FUNDED THROUGH EDA PROGRAM

Under EDA's planning grant program there are approximately 1,800 employees which include 564 professional planners. The 35 planners referred to above are Federal employees and include clerical positions.

SUCCESS OF EDA PROGRAM

Senator INOUYE. Do you believe that EDA has done a good job?

Secretary BALDRIGE. I think it has been spotty, Senator. In some cases it has. When it began and perhaps 10 to 12 percent of the country was eligible under EDA as a distressed area, I think it had some really good effects. If I may say so, sir, as the affection and love of Congress grew for this program, all of a sudden 85 percent of the country was eligible as a distressed area. The necessary diffusion of funds in that case had much less impact, and some of the projects were becoming neither worthwhile not cost-effective projects. We have seen a real growth in this area and I think it is inevitable for most Government programs. In the early 1970's a law was passed that we could not redesignate areas once a poverty or distressed area had been lifted out of that classification. We were rendered legally unable to call it a distressed area any more or change it. In 1973 we introduced the title IX economic adjustment assistance provision which was submitted as a replacement for EDA to target that more carefully. Instead, the Congress simply added it onto what we already had and made EDA a larger program.

In my own opinion the worst thing that happened was in 1976, when as a result of the very severe recession, almost a depression in 1973–74, EDA funds were lifted from $600 million to $6 billion in order to put people back to work. That $6 billion hit the economy in 1976 and in 1977, just in the middle or at the end of one of the sharpest bouncebacks in our economy that we have ever seen. All it did then was to exacerbate inflation. That kind of Government help we really do not need. It was a mistake. We have not been able to target this program in the agency to the truly most needy areas and to try to target for the whole country the effect is lost. We are very strongly in favor of using combination block grants for the infrastructure and the enterprise zone proposal. We do emphasize the enterprise zone. We are working with Congressman Kemp on that. I believe that is what we need.

Senator INOUYE. Are you suggesting that in 1976–77 it was the EDA appropriation that caused the economic problems of that day?

Secretary BALDRIGE. I am suggesting that in an effort to help with the problems of the 1973–74 recession, Congress raised the EDA funds from $600 million to $6 billion. However, by the time that $6 billion got through and into the economy, the economy had already recovered, times were good and inflation was a problem. That $6 billion exacerbated the——

Senator INOUYE. Actually that was not EDA money. That was Public Works money.

Secretary BALDRIGE. Public Works administered by EDA. EDA was the vehicle.

Senator INOUYE. We have been assured by Mr. Stockman that the sacrifices obtained will be justified, and according to our studies with this elimination the sector that will suffer the most will be the Northeast. Is my estimate correct, sir?

Secretary BALDRIGE. I do not know that the actual percentage of moneys in EDA has been tilted toward the Northeast. I just do not know. If that is true, I was not aware of it. I had been under the impression, Senator, that as the distressed area designation has spread over 85 percent of the country, that inexorably there comes a pressure to spread the moneys evenly and you may be correct in that.

Senator INOUYE. I believe the record shows, Mr. Chairman, that is correct, Mr. Chairman, in your part of the country?

Senator WEICKER. That is correct. Just as EDA was primarily initially a rural program, because the rural area is left in the backwater of Government and private attention, then as your older cities in the Northeast started to get back in the backwater, a special incentive was needed to have full enterprise. It was concentrated in those areas. That is why the geographic percentage to me is meaningless, Mr. Secretary, because quite frankly, it has shifted, as indeed the patterns of economic patterns, the labor patterns, whatever other factors are involved have shifted, EDA has shifted.

Secretary BALDRIGE. I agree.

Senator INOUYE. I will come back, Senator. Thank you.

HOW THE REDUCTION AFFECTS THE DEPARTMENT'S MISSION

Senator WEICKER. The Department's mission is to foster, serve, and promote the Nation's economic development and technological advancement. Your budget states that the Department seeks to fulfill its mission by:

> * * * promoting progressive business policies and growth; assisting States, communities and individuals toward economic progress; strengthening the international economic position of the United States; and improving man's comprehension and uses of the physical environment and its oceanic life * * *.

Among others.

In general terms, Mr. Secretary, how does eliminating the Economic Development Administration and reducing NOAA's budget by $250 million support the Department's mission?

Secretary BALDRIGE. As I said earlier, Senator, I come from an area in the private sector where it seems to be my lot in life to continue to attempt to transform the red into the black. So I am familiar with budget cutting and the reasons for it. I spend my whole life doing that. I have great sympathy for this kind of problem. We have to go back to the central thesis. It is almost a mistake to talk about macroeconomics because that bothers a great many people on the Hill. They look on it as something up in the air, it is not helping the little man. I think the reverse is true. We are looking at a Carter estimate for a balanced 1981 budget, as a matter of fact $2 billion in the black last July or August. By the time this administration got in, it was almost $60 billion in the red. You know what results from that. We see it in interest rates. It crowds out private sector borrowing. That is where the jobs come from—business, agriculture, they do not come from the U.S. Government-funded programs.

What is killing the little man right now is interest rates and inflation. There is no way to get at that, unless we can reduce Government borrowing. That is not the whole answer but it is a good part of the

answer. If we don't we will certainly continue to have inflation and high interest rates. That is what hurts the little man, more than it hurts the wealthy individual or the large corporation.

I know in cutting the budget that to get the magnitude of the cuts that are necessary we have got to do this.

EFFECTS OF REDUCTION ON NOAA

Senator WEICKER. Mr. Secretary, I am afraid the answer was not responsive to the question. This is not a budget committee. We have a budget committee. This committee oversees various and sundry budgets, one of which is the Department of Commerce. Our interest is the substance of the programs and to match up the dollars with the substance. I am not holding a budget committee hearing. It is not a session with Dave Stockman. Our responsibility here is to see that various programs are cut or raised or level funded, so we deal with the substance of those programs, not some overall grand economic aid plan. We have heard that grand economic aid plan. I generally agree with it. But nevertheless it has no part of the function of this particular committee. What I want to know for example is as far as NOAA is concerned, exactly what was done in terms of these cuts in the sense of acquiring the knowledge of substance? Who, in other words, consulted with NOAA and who else did they consult with in making these cuts?

Secretary BALDRIGE. The previous question referred to EDA.

Senator WEICKER. And NOAA.

Secretary BALDRIGE. I will just take two sentences on EDA. The substance of that cut was mutually agreed upon. As a matter of fact, I would say I was an equal partner with the OMB because I believe in that, because I had assurances and still do, that community block grants and the enterprise program will be there to take up the problems of the distressed areas. On NOAA, our staffs have been in communication. Our effort is to take the specific programs that truly are State programs and allow them to go back to the States. As to the NOAA cuts, it is to, in effect, turn back to State and local areas those parts which they share.

Mr. PARKER. I might just add to what the Secretary said with respect to NOAA that a substantial portion of that reduction, about $136 million of the $250 million, was in satellite programs, the so-called LANDSAT program.

SEA GRANT

Senator WEICKER. I understand that. I also understand that for 5 years, and whatever that represents in terms of man hours, the members of this committee, the staffs of this committee, and various Members of Congress, have tried to put together one of the tightest operations in Government. That comes out loud and clear just from the personnel figure, supposedly an empire building exercise. In conjunction with the various advisory committees in the science community, we put together those programs that would give us the greatest return on the dollar invested. I am not going to have some nincompoop from the administration set a bottom line figure as to what we are going to do to NOAA in a matter of a couple of weeks and have it presented to me as

being a productive exercise in terms of, either return on dollar invested or in terms of general scientific policy insofar as the Nation is concerned. I am not. I want complete justifications on every one of these items. I know most of these items because I put them in. I want to know about where sea grant falls in the category of fat, waste, and abuse. This gives us for a minimum investment the broadest spectrum of scientific knowledge available anywhere in the world, as it relates to the oceans.

This is not the U.S. Government. These are the academic institutions of the various States that participate. Unfortunately our State of Connecticut has been way behind. They have not participated until this year. Now, Mr. Secretary, you tell me where the State borders and interests end on when it comes to this common resource called the oceans. You tell me, in other words, Massachusetts is going to do something, Connecticut is going to do something, in the opposite direction or nothing at all, so on down the line. Tell me, Mr. Secretary, how this is handled as a State matter. Should we have different standards in terms of research and development, in terms of setting pollution standards for the air? For the water? How do we do this on a State basis?

Most important, I want to know exactly who was consulted in NOAA and what was the evaluation process for this meat ax approach on this particular budget. I do not want to hear the same argument given as the administration, Mr. Stockman's, general economic game plan. We want to be very specific. That is the job of this committee.

Secretary BALDRIGE. All right. I will be specific. First you said that sea grant was a tightly administered program. In 1979 there was a sea grant project at the University of Hawaii to study the effects of marihuana smoking on divers. Sea grant funds have been expended in New York City to teach children how to fish in Central Park.

The General Accounting Office has reviewed some 60 projects in Delaware, Maryland, Rhode Island and found that only 7 of them had any impact. An MIT study in 1977 pointed out that most projects are essentially an extension of the investigator's existing area of research interests. We have had to stop two sea grant projects in New Hampshire because they were purely of academic interest. There are another two sea grant institutions, at the University of Miami and Michigan that have had program funding reduced for poor performance. I am not questioning the overall good will that this program——

Senator WEICKER. I am not interested in good will.

Secretary BALDRIGE [continuing]. And some of the very good effects it has had. But the sea grant program as a Federal program is not helping the people in Kansas. It was set up to help the States that border the ocean, where there is fishing involved.

There is no reason—if this is a good program—why Massachusetts and Connecticut——

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THE OCEAN AS A GREAT RESOURCE

Senator WEICKER. Mr. Secretary, in other words, we are going to start to sort of balkanize the country insofar as appropriations are concerned. I assume the fact that there are national interests served by the agricultural interests of Kansas, Iowa, Nebraska, et cetera, that those are truly

national interests in terms of agriculture, even though the actual act is performed within those States. What you are telling me now, is let's go ahead and set Kansas against Connecticut, Massachusetts, California, et cetera, because their main interest borders on the research of the oceans.

You are an intelligent man. Don't start on that approach with the oceans. The oceans are one of the greatest resources we have and the only area that we are going to have left to turn to eventually for our energy and for our food. What you are turning to me and saying is that this is sort of a good will type of exercise. Good will? I'll tell you, it sits No. 1 on the list of priorities in Japan, No. 1 on the list of other maritime nations that go right down the list as to how they view the oceans: the Soviet Union, Cuba, Spain, West Germany, France, all of them are ahead of the United States of America.

Secretary BALDRIGE. Canada.

Senator WEICKER. Canada.

Secretary BALDRIGE. Let me describe the use of the phrase "good will." I mean the good will was there to have a program that would help. I don't mean it was a good will program. But I could not agree that it is in the national interest because the sea grant programs focus on how the fish are harvested, not on the national program of aquaculture, how fish are grown as a resource. In my opinion there is a difference.

Senator INOUYE. Mr. Chairman.

STUDIES CONDUCTED ON THE USE OF MARIHUANA

Mr. Secretary, I am certain you are aware that according to the studies released recently anywhere from 50 to 80 percent of our high school students use marihuana. And marihuana is a rather common commodity now in the lifestyle of Americans. It was decided at that time that since there was a possibility that many of the fishermen who have to dive great lengths may be marihuana smokers and they don't ordinarily publicize the fact that "I smoke pot," they thought they should make a study because we have a few people coming up with bends. You may consider that to be a rather capricious way of spending money. But there are some who felt that it may be of great use to some people. Whether you like it or not, it is a fact of life.

I don't know what percentage in this room smokes pot, but I would give you odds that somebody in this room is smoking pot at least every day. That is the name of the game today, unfortunately.

If that is the case, we have got to face up to the facts. That is what they decided to do in Hawaii. Somebody had to do it; otherwise, you would be having a lot of people dying of bends and we not knowing what is the cause of it. But I will let the people in Hawaii know that you consider that study rather childish and unnecessary.

Secretary BALDRIGE. I think I used the word "questionable."

ECONOMIC BENEFIT OF SEA GRANT PROGRAM

Senator WEICKER. This is a golden fleece type of operation. You can pick out one or two programs in anything that the Government does, anything that Government does at all. When I take a look at what has been done to NOAA, I put it very much in the same category as what has been done to NASA.

Somebody always tries to create circumstances for abuse. But I object to the thought that there has never been any examination of these various programs. There was merely a bottom line figure insofar as cutting the budget. That is not reason enough. Without going into great detail, but the study, the data from the economic appraisal came from the sea grant program nationwide. So to that extent, the ocean sector economic analysis followed the national accounting system model.

The economic benefit to industry, business, and Congress derived from 57 projects stimulated by Federal investment through sea grant showed: (a) fish, $49,782,000; seafood processing marketing, $46,750,000; aquaculture, $22,500,000; and so on down this for a total of $217 million, coming back as a matter of the investment made through these various universities and colleges.

Just as you have your special interests that coincide with your business, and now the governmental interests, so do I. This is a program that I view not only from this side of the table, but also in daily contact with the people involved in NOAA and those associated with NOAA.

Mr. Secretary, let me tell you, a terrible disservice is being done to this country as far as this particular program is concerned. The State of Connecticut has very little in it. I want to make that point. We have no sea grant. We are hoping to get some this year. We have never had any sea grant money, to the shame of the State. We do have an Aquaculture Laboratory, which is peanuts in the total budget. It is not a matter of talking for a political constituency here. I am talking for national priority. I wouldn't object if there were good reasons given for the type of cuts that have been affected. But I am sorry. In this area, I think that hasn't been done. They know it hasn't been done. We know it. I just don't think that it is the type of thing that can take second place to some grand economic game plan.

I know you are pressed for time.

Senator Inouye, I have got some further questions, but I will defer to you.

CARGO PREFERENCE ACT

Senator INOUYE. I would like to submit most of my questions if I may, but ask just one. It has to do with one of my favorite areas, cargo preference. I have been looking through the budget and here and there I notice that cost savings are cited on the assumption that an amendment will be passed by the Congress on the Cargo Preference Act, to permit the transport of household goods by foreign vessels. Is that what you are hoping you will do?

Secretary BALDRIGE. I have got to admit I am not familiar with that, Senator.

Senator INOUYE. Here is a small one, Drug Enforcement Administration. It is not a huge organization. There is a reduction of $250,000,

which is peanuts, which assumes passage of amendment to the Cargo Preference Act to allow shipment of household goods on non-American vessels.

Secretary BALDRIGE. I was not aware of that, sir.

Ms. Richards?

Ms. RICHARDS. Senator, we were not aware of any changes in the general cargo preference. The committee staff pointed out changes in other budgets. We would be glad to check further on that. There had been some general discussion on broad cargo preference earlier in the budget deliberations. As far as we know, there have been no major changes.

Senator INOUYE. I hope you people are running the show and not OMB. But that is what it says. This is what you people have submitted to us. This is contrary to what has been articulated by the present administration, which is supposed to be for our merchant marine.

Secretary BALDRIGE. I will look into that, Senator.

[The information follows:]

LETTER FROM MALCOLM BALDRIGE

APRIL 3, 1981.

Hon. DANIEL K. INOUYE,
Subcommittee on State, Justice, Commerce, the Judiciary, and Related Agencies, Washington, D.C.

DEAR SENATOR INOUYE: During my appropriations testimony on March 25, 1981, you read a Drug Enforcement Administration (DEA) justification statement that implied an administration policy change concerning the Cargo Preference Act (Public Law 83-664). The DEA justified a reduction of $250,000 on the assumption that the act would be amended to permit Government-generated shipments of household goods on non-U.S. flag ships. On checking with the Department of Justice and the Office of Management and Budget (OMB), we confirmed that the DEA justification is incorrect. Although the administration reviewed the Cargo Preference Act in the course of Maritime issue discussions, no policy changes or related budget reductions were made. I understand that Justice and OMB are working to resolve the issue of the DEA and Justice budget cuts.

The revised Commerce budget requests do not contain any reductions related to the Cargo Preference Act.

If I can assist further, please let me know.

Sincerely,

MALCOLM BALDRIGE,
Secretary of Commerce.

STATUS OF DEPARTMENT'S POLITICAL APPOINTEES

Senator INOUYE. Finally, if I may ask, I believe you are the only confirmed appointee in the Department, aren't you, at the present time?

Secretary BALDRIGE. Yes.

Senator INOUYE. When can we expect the whole array of officials to be submitted, nominated, and confirmed?

Secretary BALDRIGE. My desire for that is greater than yours, Senator. Out of some 15 Assistant Secretaries, we have selected 12 or 13 and all are in the pipeline. Coming up this week will be the Deputy Secretary, one of the Under Secretaries, and the General Counsel. But I can't guarantee that. That is just my estimate. The rest are all in some stage of this process.

Senator INOUYE. But it is all in the pipeline now?

Secretary BALDRIGE. Yes; they are all picked. There was a very extensive interview process. We interviewed four people for each job in or-

der to pick what we thought were the right people. It is a complicated process.

Senator INOUYE. Thank you, Senator.

Senator WEICKER. Thank you, Senator Inouye.

INVOLVEMENT BY THE STATES IN SEA GRANT PROGRAM

Mr. Secretary, I would like to go back to your example. I thought about this while Senator Inouye was asking his question, of the sea grant, and you cited all of these abuses. sea grant basically is a program that is run at the State level. In other words, the seed money is Federal, but it is run at the State level. How do you go ahead and equate your argument that these matters should be handled by the States, indeed we have a situation which, according to you, has been greatly abused. But how do you coincide since you chose to make that your example of abuse at the State level when indeed you say that what is going to fill the vacuum as far as the Federal Government is concerned are the States?

Secretary BALDRIGE. Senator, please, I am not hanging my case on the fact that the sea grant program has been greatly abused. I was merely referencing my remarks to the statement that this was the tightest program going and I was trying to show that even in the tightest program we have abuses.

The fact is that the seed money is Federal and not State. It is not going to be looked at as closely at the State level as if it were State moneys involved. I think that is a legitimate theory.

Senator WEICKER. Yes; but the problem is that the end result is one of benefit to the United States of America. So I look at it in terms of results. If the result isn't achieved, as I said, the result in this area is not something that can include any particular State as a national resource, a national problem, a national opportunity.

Secretary BALDRIGE. Senator, any of these programs do provide benefits.

SUPPORT OF FISHERIES DEVELOPMENT

Senator WEICKER. I will tell you what I think of this list of examples. I wish whatever little twinkie figured that out would have gone ahead and looked into the programs themselves, to take the same amount of time and effort to look into the programs. We know this kind of demagoguery. We see it among our colleagues all the time on the floor of the Senate.

It does a great disservice, as I said, to what really has been a solid scientific achievement for the United States of America.

FISHERIES DEVELOPMENT SALTONSTALL/KENNEDY FUNDS

I am aware of your support and commitment to fisheries development. The need is clear. With the world's richest fishing grounds within our 200-mile coastal jurisdiction, this country continues to import 70 percent of the fish we consume. The annual trade deficit for fish products alone is $2.5 billion.

If you want to talk strictly economics, let's talk about the fact when we put ourselves in this area, at the present time we are not exporting.

To support domestic fisheries development, Congress passed the Saltonstall/Kennedy Act. This act sets aside 30 percent of the duty on imported fish products in order to fund domestic fisheries research and development. Hence, the amount in the fund varies directly with the level of imports, and thus provides valuable assistance to our domestic fisheries industry to make it more competitive with imports.

Would you explain why $15 million, which is over 50 percent of available Saltonstall/Kennedy funding in fiscal year 1982, is being diverted to fund NOAA programs other than fisheries research and development?

Secretary BALDRIGE. The fishing industry will develop when there is economic opportunity, and without the Federal assistance, such as proposed in the fishery development grant programs. Some of those grant-supported projects have been only marginally effective. We do have a policy in this administration of placing responsibility for industry with industry itself and local governments. You know, everybody wants to help the fishing industry. we want to help all industries.

Senator WEICKER. You know where our fishing industry is, off the coast of Connecticut. Have you ever seen our fishing industry compared to the Soviet Union and Poland out there on the Georges Bank? Do you understand the difference in technology? These are two- and three-man boats going out of Connecticut and they come up against mother ships, trawlers, the size of ocean liners out there, with all the technology aboard. There is the disparity. If indeed private enterprise is going to take care of it, certainly more people are eating fish than ever before, why is it that the private enterprise isn't out there with its trawlers and mother ships?

Senator BUMPERS. I am sure glad you are from Connecticut. He would really be tough on you if you were from someplace else. [Laughter.]

Senator WEICKER. You are throwing gasoline on the fire here. [Laughter.]

INVOLVEMENT OF PRIVATE INDUSTRY IN THE FISHING INDUSTRY

I will not argue with Mac Baldrige. He knows that. That is what makes me so mad right now. I am arguing with those standing behind Mac Baldrige that handle this nonsense. But let me make the other point. Correct me if I am wrong, but about 15 years ago, private enterprise—General Electric, Westinghouse, these would be two good examples, thought there was money to be had in acquiring a manned undersea capability and built deep sea submersibles both stationary and those that moved. They found out it wasn't so profitable. So they got out of the business.

As a matter of fact, you will see these rusting at various places, all over the United States. The only person that now conducts or has that kind of capability is the Government of the United States, except for West Germany, Japan, and Canada, and other nations that realize that you can't do above the water as well what you can do when you are right down on the bottom of the ocean floor. So private enterprise doesn't want to have anything to do with it. There is a difference. Private enterprise is not in the business of risking large amounts of money

and clearing the net losses on the bottom line. That is not the job of private enterprise. But sometimes when there is risk taking, which is the mission, whether it is in the city with EDA, or on the bottom of the ocean floor, that is where the Government has to go. That is what I object to insofar as this budget is concerned. Private enterprise is not going to pick it up. They are not going to go ahead and make this competitive with the Soviet Union and raising the money required to gain an expertise on the bottom of the ocean floor. Wouldn't you admit that that is a proper function of Government, and private enterprise doesn't want to touch it?

Secretary BALDRIGE. Yes; it is a question of where to draw the line.

We have, in the fishing industry, an example of private enterprise stepping up to bat and starting to do a good job.

Senator WEICKER. Where?

GEORGES BANK

Secretary BALDRIGE. In the Northwest, we had a problem because the Japanese at first were the only ones who could fish for crab. Our own industry has gotten up to the mark on that. We are in consultation now about how much crab we are going to let the Japanese catch based on recent optimum yield—OY—estimates. The fishing industry has developed the expertise to do it.

In the Georges Bank area, we had very intense discussions on the fact that the potential for overfishing of Georges Bank was brought about, by not just a good Canadian fishing fleet, but by the fact that the U.S. fishing fleet may be outfishing the Canadians there.

As a result, we have a potential problem as to how much sea bed of clams we have left in that Georges Bank area. That is a very serious problem. It shows to me, sir, that where we have the economic opportunity, the United States will step up to bat. If you want to talk about the problem of a two-man fishing boat competing against the Russian huge trawler, the Government decision is that we will not tackle that area. We don't do it in steel, we don't do it in automobiles, we don't do if in textiles, except through some form of pricing mechanism and the GATT negotiations. We don't get in there and subsidize.

Senator WEICKER. What we can do is to go ahead. Fishermen out of New Bedford don't have the money to put into research or development, into developing the stocks of fish we have, developing new stocks, or to go ahead and see what can be done in terms of aquaculture. He doesn't have that kind of money. It takes everything he can do to get the boat in the water, go out there and fish and bring it back.

Secretary BALDRIGE. I agree with you about the aquaculture part of it. The growing of fish, I think, is very proper——

Senator WEICKER. Mr. Secretary, believe me when I say, one of the greatest opportunities this country has is in the areas of oceans and fishing. I will give you an example as to what the Communist nations are doing. Ten years ago, Cuba had no exports at all when it came to fish, and no deep water fishing fleet, none, zero. Today they have the third largest deep water fishing fleet in the world, and next to tobacco and sugar, that is their third biggest export.

There is a small little nation off our southern coast here and under an economic system that both you and I disagree with. But they are not dumb. They know where the money is. I think that we do also, but we are not going to be able to handle it correctly unless we plan for it. That involves everything from conversation to the mechanical means, to the scientfic research and development.

I am telling you right now, our fishermen do not have the money, they are small operations. We don't have big American corporations that are involved in this area. We just don't. They don't have the money we are talking about here.

Senator Bumpers?

APPALACHIAN REGIONAL COMMISSION

Senator BUMPERS. Mr. Secretary, I want to talk to you for a little bit and ask you a few questions about EDA and the title V commissions. I assume you are familiar with the genesis of the Appalachian Commission?

Secretary BALDRIGE. Yes.

Senator BUMPERS. One of the things that sets the Appalachian Commission apart from the title V commission is $200 million in highway funds which this administration is proposing to leave in and simply eliminate the other $140 or $200 million, I forget the exact amount. Why are you leaving those highway funds in?

Secretary BALDRIGE. That region had the poorest highway system in the Government.

Senator BUMPERS. You have never been to Arkansas; is that correct?

Secretary BALDRIGE. Yes; I think it is worse than Arkansas. There are more hills; narrow roads. Maybe I haven't been to all the parts of Arkansas, Senator, but I have been down there. That system isn't completed yet. I think, the largest reduction of all of the regional commissions came out of West Virginia, but they do need that. They need a highway system.

Senator BUMPERS. There are 13 States in that commission. I think we have a sense to concentrate on West Virginia, but just for openers, there isn't a State in the Appalachian Commission that doesn't have a higher per capita income than my State, there isn't a State in the Appalachian Commission that has as high an unemployment rate as my State, and the whole genesis of this, of course, was economic development. The only reason the title V commissions were ever created in the first place was because Senator McClellan was chairman of the Appropriations Committee, and he said, "I ain't going to sit idly by and see 13 States, all of which are better off economically than my State and my region, get this exorbitant amount of money for the guys that are eliminating poverty when we have more poverty in our State than anywhere." So the Ozarks Regional Commission was set up. It spread like Topsy.

As you know, we have eight title V commissions, all of them declared economically deprived areas. That is a bunch of nonsense. My point, Mr. Secretary, is I loved the Ozarks money when I was Governor, it gave us a great deal of discretion. We could dispense that around to bail out projects. It was great politically and I loved it. But I always thought it had highly marginal reason for existing.

Frankly, I thought the results were highly marginal. But I cannot—and I say this with the utmost respect—vote to eliminate those title V commissions and eliminate that very small amount of money that comes into my State, which we appreciate very much, and leave $200 million in highway funds in the Appalachian Regional Commission. I suspect it is sop more than anything else to a few Senators around here who happen to have a lot of clout in this body.

Secretary BALDRIGE. Senator, I will look into that again.

Senator BUMPERS. Were you involved in the decisionmaking process, or was this mostly David Stockman, to leave the $200 million in the highway funds in?

Secretary BALDRIGE. The decision to leave $200 million in highway funds was mostly David Stockman's decision.

RATIONALE BEHIND DECISION ON APPALACHIAN COMMISSION HIGHWAY FUNDS

Senator BUMPERS. Were you there when the decision was discussed?

Secretary BALDRIGE. Yes.

Senator BUMPERS. What was the rationale at that time?

Secretary BALDRIGE. I do not remember frankly, Senator. We were discussing so many things. The way this process worked is that the departments proposed their own cuts, OMB had its own ideas, and we met and worked them out. We had recommended the termination of EDA ourselves. I was in favor of discontinuing the title V commissions for the same reason. I do not remember in that process the complete talks we had about the highway funds.

Senator BUMPERS. I want to say, Mr. Secretary, it never made any sense to me, even when I first learned about these things in my first year as Governor. I began to wonder why Appalachia got about five times as much as all the title V commissions put together. I have always considered that grossly inequitable. If there was any justification for the creation of these things to begin with, I thought it was done in a most unequitable manner.

Secretary BALDRIGE. At that time I suppose the rationale was that Appalachia was looked on as the most impoverished area in the country. Right now in that region—and I believe these are the correct figures—the average annual income is 93 percent of the average national income.

Senator BUMPERS. In that region? It is 73 percent in my State.

Secretary BALDRIGE. Some States must be over 100.

Senator BUMPERS. Some States indeed are way over 100.

Secretary BALDRIGE. But we are proposing, sir, the block grant concept for the infrastructure, sewage, and pipeline, and the enterprise zone idea for impoverished areas. In my opinion that should be rural as well as urban, and I am working toward that end. It should not be limited to just urban projects. It should cover other areas of distress.

TRADE ADJUSTMENT ASSISTANCE

Senator BUMPERS. You had some allusion and reference in your statement here to a trade adjustment assistance which you were proposing to leave in EDA. Is that correct?

Secretary BALDRIGE. The trade adjustment program is to be transferred to ITA. It would be left in the budget.

Senator BUMPERS. What is the rationale for taking away other trade adjustment assistance such as the automobile workers enjoy, and leaving it in the EDA?

Secretary BALDRIGE. I do not think that is correct, Senator, that the automobile workers' trade adjustment assistance is being taken away.

Senator BUMPERS. It is being effectively eliminated because as I understand the administration's proposal, and I am not a chaperone of this program, it is my understanding that they will not be eligible for it until after they drew their unemployment compensation.

Secretary BALDRIGE. That is correct. The way it is now, the compensation that auto workers receive is close to 90 percent of their annual wage if you get both unemployment and trade adjustment assistance, which is pretty good compensation.

Senator BUMPERS. You do not get 90 percent of the average wage, do you?

Secretary BALDRIGE. I think it is close to that.

Senator BUMPERS. It is my understanding you cannot seek 70 percent any way you slice it. If you are getting both, you only get that amount of trade adjustment, it takes you up to 70 percent. I would like to know if I am wrong about that. I may be suffering under an illusion.

Secretary BALDRIGE. I will look into that.

Senator BUMPERS. Obviously 70 percent tax-free money is about equivalent to 90 or 100 percent of your average wage.

Secretary BALDRIGE. That really would compare with all of our other unemployed people.

ECONOMIC DEVELOPMENT ADMINISTRATION'S RESCISSION

Senator BUMPERS. One final question, Mr. Secretary. You are proposing to rescind a good part of the EDA budget for this year. Is that correct?

Secretary BALDRIGE. Yes, sir.

Senator BUMPERS. How much is in the EDA budget, how much do you propose to rescind for this year?

Secretary BALDRIGE. We have $664 million in the 1981 budget, and we have a proposed rescission of $342 million.

Senator BUMPERS. Do you know from your own statistics that more than that has not already been committed by the Economic Development Administration?

Mr. PARKER. We know what has been submitted.

Senator BUMPERS. So you know you can rescind that?

Secretary BALDRIGE. Yes.

Senator BUMPERS. We have 537 planning and development districts in the country. They are funded by EDA. They are being held in a short leash. They do not really know what is going to happen to them. It looks like you could at least give them some kind of assurance in advance of 60 to 90 days that there will be no further money for those planning and development districts.

Secretary BALDRIGE. We have arranged, and I think they have been given notification, that all operations would be phased out by March 31. We did that the first of February.

Mr. PARKER. The grants that were up for renewal before March were going to be run through the end of March.

Senator BUMPERS. That is 7 days from now. We have not received the rescission up here yet. I am sorry. We have received it.

Mr. PARKER. I think we have discussed it and there is a real hardship situation that we might want to use the 60 days on.

Senator BUMPERS. In all fairness to these people you should not torpedo them on a week's notice.

Mr. PARKER. In any event, they had notice some time back, Senator.

Senator BUMPERS. Thank you. Mr. Chairman.

Senator WEICKER. Thank you, Senator. I notice the Secretary notified us earlier that he has a meeting down at the White House at 10:45. I have some letters Senator Bumprs received from Arkansas which I would like inserted in the record.

[The information follows:]

LETTER FROM JESS E. PULLIAM MAYOR, CITY OF CORNING, ARK.

March 19, 1981

The Honorable Dale Bumpers
United States Senate
6313 Dirksen Building
Washington, D.C. 20515

Dear Senator Bumpers:

The proposed elimination of the Economic Development Administration is of great concern to those of us who have witnessed the economic impact of this small federal agency, on our town of only 3,200 people. All of us are willing to have programs cutback, and especially cutout "fat and fraud", but EDA is not one of these giveaway programs.

One of the most successful and effective EDA assisted projects has been the Corning Industrial Park funded in 1972 for water and sewer improvements. The first industry to locate in the new park was Darling Manufacturing Company which initially employed 20 and has since expanded its facilities twice (1974 and 1978) and today employs 325. The second industry to locate in the park was Corning Distribution Company (Carter Carburator) in 1974, the city was funded by the Ozarks Regional Commission, State "304" funds and the Farmers Home Administration for railroad spur, access road, service road, and water system facilities in the industrial park complex. As a result of this project, Hart's of Arkansas located in the park and today employs 68. The Corning Hospital was also constructed in the industrial park complex in 1978 and today employs 60. EDA investments in the Corning Industrial Park has contributed to the creation of approximately 600 long-term jobs and generated approximately $4,000,000 in private investments. The federal tax revenues generated by the EDA assisted projects totals over $7,000,000.

With the successful track record that EDA has established WHY was EDA selected for elimination when this particular program supports the Administration's objection ". . . to assure that all rural citizens -- whether they are farmers or not -- have the same consideration in matters of economic development . . . and in employment opportunities which are given to those who live in town and cities . . ."

EDA is a rural program that provides jobs, produces private investment and returns more federal revenue than it despenses.

Please support the retention of EDA because it is certainly a most cost-effective program.

Respectfully,

Jess E. Pulliam

Jess E. Pulliam
Mayor

LETTER FROM JAMES T. JORDAN, MAYOR, CITY OF MONTICELLO, ARK.

March 26, 1981

The Honorable Dale Bumpers
United States Senator
Senate Office Building
Washington, D. C. 20510

Dear Senator Bumpers:

As Mayor of a small city in the state of Arkansas who has seen the many changes that have been brought about by the Economic Development Administration, I am writing to you to express my full support for the continuation and funding of the EDA. I give you the following success story that has been brought about in Monticello, Arkansas as a result of the seed money that the EDA has made available to our community.

In 1966 the City of Monticello received $32,000 EDA money as the first grant to assist Burlington Industries to expand and locate additional plants in our city. The city contributed $32,000 from the General Fund to match this money in providing the industrial water expansion. This, in turn, caused Burlington to expand their operations and created 225 new jobs, as well as saving the jobs which were already there.

In 1967 the Southeast Arkansas Economic Development Council, Inc., made up of 10 counties in southeast Arkansas, was organized and funded with local funds contributed by the city and county to match a grant from EDA. The office is located in Pine Bluff, Arkansas. During that year we applied to EDA and received a grant for Industrial Waste Disposal in the amount of $109,000, which was matched with $109,000 from local funds. This project allowed Burlington to build an additional plant in Monticello, the Monticello Carpet Mill, creating 125 new jobs. Monticello Carpet Mill now employs about 280 people.

The Health, Education and Culture Center located in Monticello was developed after the City of Monticello, the County of Drew, Monticello School District, Arkansas A & M College (now the University of Arkansas at Monticello), and Drew Memorial Hospital applied for an EDA grant in 1969. A grant from EDA was received for $937,800 ($781,500 from EDA and $156,300 from EDA District Bonus). The City of Monticello, the County of Drew, Arkansas A & M College, Monticello School District, and the Drew County Memorial Hospital Board obligated $625,200 of local funds to make a total project of $1,563,000.

The first project constructed on the HECC site was the Drew Memorial Hospital, which cost approximately $2,000,000. The citizens of Drew County voted in a five mill tax by a large majority to construct this hospital. In less than a year the Monticello School District voted an additional 5 mill school tax to construct a new high school in the complex at a cost of $1,000,000.

The HECC project also provided a water and sewer system to Arkansas A & M College, which at that time used septic tanks. This saved A & M over $1,200,000 in funds. It also provided additional water and sewer for our west commercial and industrial area, which today amounts to $20,000,000.

Since the complex opened, four medical doctor's offices, one dental clinic, one optometrist's office, the Southeast Arkansas Delta Counseling and Guidance Center (headquarters for five southeast Arkansas counties), and a new Army National Guard Armory have been constructed in the complex. Also, three acres of land have been provided for the Sesame School for handicapped children, which has an enrollment of about thirty-five children. Recently, the voters of Monticello approved a 5 mill increase for $2,000,000 to provide an addition to the hospital, needed because of growth and needs. I might add that these facilities

eventually will help us become the health center for Southeast Arkansas. Through the joint effort of the EDA, the City of Monticello and private investors, over 525 jobs have been created, plus those that have been saved.

In 1970, the City of Monticello applied for another water and sewer expansion, needed due to the growth of Burlington Industries and new plants being constructed by Burlington here in the city. A grant of $534,000 from EDA (including $445,000 from EDA and $89,000 EDA District Bonus) was received, with $356,000 contributed by the city, making a total project of $890,000. This project created 500 new jobs through Burlington Industries.

With the help of EDA, we estimate that over 2,500 jobs have been created, plus the retention of jobs that would have been eliminated if funds from EDA had not been made available. The partnership of EDA, the local community and their contribution, the leadership of the elected officials, the assistance from the SEAEDD (funded in part by EDA), and the investment of private capital has been responsible for our community's doubling in population in the last 10 years. Our bank deposits have increased 4 times during the last 15 years.

I would like to state that as Mayor of the City of Monticello, I feel that we have returned three tax dollars back to the U. S. Treasury for every one dollar spent in the initial investments made by the Federal government through EDA. Senator, I cannot express how important EDA projects have been to our citizens and local governments, and how important future EDA funding will be to us. We all know that it is good business when you show a profit.

Sincerely yours,

James T. Jordan, Mayor
City of Monticello

LETTER FROM DALE BUMPERS

[CLERK'S NOTE.—Subsequent to the hearing the subcommittee received the following letter from Senator Dale Bumpers regarding the Economic Development Administration's disaster recovery grant. By direction of the chairman the letter has been printed in the record.]

[The letter follows:]

LETTER FROM SENATOR DALE BUMPERS

JUNE 15, 1981.

The Hon. LOWELL P. WEICKER, JR.,
Chairman, Subcommittee on State, Justice and Commerce, Committee on Appropriations, U.S. Senate, Washington, D.C.

DEAR LOWELL: Since we are in the process of considering the fiscal year 1982 budgets of various agencies under the jurisdiction of the subcommittee, I though you might like to see the success one town in my State has had with an EDA disaster recovery grant. As you know, EDA is proposed to be cut substantially under the President's budget.

I request that the letter I have enclosed from Mayor Clements by included in our subcommittee's hearing record on the Economic Development Administration. His thoughts and the statistics he has enclosed will be helpful in our deliberations on the program and whether or not it should be funded.

Thanks for your consideration of this request.

Sincerely,

DALE BUMPRS,
U.S. Senator.

LETTER FROM GLEN P. CLEMENTS, MAYOR, CABOT, ARK.

MAY 5, 1981

Hon. DALE BUMPERS,
6443 Dirksen Senate Building Office,
Washington, D.C.

DEAR SENATOR BUMPERS: On March 29, 1976 the city of Cabot, Ark., was hit by a tornado that destroyed our business section, and several residences, killing five people.

The Central Arkansas Planning and Development District, Inc. personnel were here minutes after the tornado assisting in rescue and assessment of damages. The damage was about $10 million.

Due primarily to the efforts of the local planning and development district the city received a disaster recovery project grant from the Economic Development Administration in the amount of $2,183,600.

This grant assisted the city to rebuild the downtown area, build a Community Service Center, install a storm sewer system in the downtown area, and to improve our water and sanitary sewer system. Additionally a comprehensive development plan was prepared for the city.

To date the downtown area has been rebuilt and to illustrate the impact the following has occurred:

The 1980 population of Cabot is 4,923, which is a 69-percent increase over 1970.

The total deposits in the Bank of Cabot on January 1, 1976, was $20,234,561.06 and increased to $32,263,834.99 as of January 1, 1980.

The assessed valuation of Cabot real and personal property was $4,013,845 in 1976. In 1980 the assessment has increased to $6,760,235 or an increase of 68.4 percent.

The Cabot school district assessment valuation has increased from $12,942,335 in 1976 to $20,742,520 in 1980. This is a 60-percent increase.

Since the project was implemented through December 31, 1980, the following building permits have been issued: residents, $11,087,567; commercial, $6,766,623; and mobile homes, $300,510 for a total of $18,154,700.

These permits are sold on the contractors estimated cost which is always conservative and does not consider the cost of the lot or land. We estimate the total construction to be over $20 million.

During this 5 year period 432 new residences have been built and 49 new business buildings have been constructed or completely renovated. These 49 buildings house 69 businesses.

In 1980, we had 126 new residences and 8 new commercial buildings valued at over $5 million. This growth was made possible because of the EDA projects which were completed in 1978 and 1979.

Enrollment in the Cabot public school system since the tornado has increased from 3,286 pupils to 3,832 pupils or a 16.6-percent increase.

New businesses and business expansion has created 323 new jobs in the city, and the potential has not been reached.

Without the EDA disaster assistance grant, leaders in Cabot believe the growth of this area would have come to a standstill and that it would have taken 20 to 30 years for us to recover, if ever.

Sincerely,

GLEN P. CLEMENTS,
Mayor.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. There are other questions, Mr. Secretary, which I will submit to you for response for the record both from myself and the others who would care to submit them. Do not let anybody—this is the way we do things in Connecticut, sit there and speak our minds to each other. I have always liked it that way. So does Mac who has been one of my greatest supporters over the years. I do wish him good luck in this new role that he is taking on. Any way I can help, as you can tell, I am more than glad to help. [Laughter.]

Secretary BALDRIGE. Senator, your advice has been very helpful.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

EQUIPMENT REDUCTIONS

Your budget request includes a proposal to reduce 1981 spending by $2,437,000 through decreases in consulting services ($644,000) and equipment purchases ($1,793,000).

What equipment purchases have been affected by this reduction? Specifically, is this office-related machinery which is not essential to the Department's mission?

The equipment reduction will be applied to the procurement of photographic equipment, training aids and devices, general purpose ADP equipment, software, supplies and support, furniture, household and commercial furnishings and appliances, office machines and visible record equipment, musical instruments, phonographs and home-type radios, recreational and athletic equipment. Photographic equipment is used by the National Oceanic and Atmospheric Administration and the National Bureau of Standards in weather and research activities. Training aids and devices, musical instruments and athletic equipment are used by the Merchant Marine Academy for its academic curriculum program. ADP equipment is used by the Bureau of the Census to manipulate statistical data and by the National Oceanic and Atmospheric Administration to make weather predictions. Furniture and office furnishings and machines wear out and must be replaced. Audio visual equipment is used in trade fairs sponsored by the International Trade Administration and by researchers in the National Oceanic and Atmospheric Administration, the National Bureau of Standards, and the National Telecommunications and Information Administration.

However, it is our belief that a reduction of 6 percent in these items will not interfere with the accomplishment of the Department's mission. We expect that it will cause each procurement request to be carefully reviewed to see if (a) the item can be repaired, (b) a similar item can be transferred from another agency where it is no longer needed, or (c) the item is really essential to the accomplishment of the agency's mission. If, after this review, the item is clearly needed, it will be procured.

For the record, would you provide us with an identification of all proposed consultant studies and management studies which are budgeted for fiscal year 1982 and the amounts budgeted for each?

We do not have a list of consultant and management studies proposed for 1982 as studies which are conducted will depend upon the circumstances and needs at that time. However, the following table shows the budgeted amounts by appropriation for 1981 and 1982 (Dollar amounts in thousands):

	Consulting Services		Management Services	
	1981 Estimate	1982 Estimate	1981 Estimate	1982 Estimate
General Administration:				
Salaries and expenses...	$60	$60	$684	$684
Bureau of the Census.....	99	98	504	550
Salaries and expenses...	8	3	241	267
Periodic censuses and programs.....	91	95	263	283
Economic and Statistical Analysis:				
Salaries and expenses...	...	...	150	150
Economic Development Administration:				
Salaries and expenses...	469	...	...	...
Regional Development Program:				
Regional development programs.....	...	...	85	...
International Trade Administration:				
Operations and administration.....	100	150	945	1,295
Minority Business Development Agency:				
Minority business development.....	1,558	843	...	...
National Oceanic and Atmospheric Administration.....	334	440	5,330	5,330
Operations, research, and facilities.....	334	440	5,300	5,300
Coastal zone management.	...	...	30	30
Patent and Trademark Office:				
Salaries and expenses...	87	87	22	23
Science and Technical Research.....	985	863	1,104	582
National Bureau of Standards.....	985	863	582	582
Office of Productivity, Technology and Innovation.....	...	...	522	...
National Telecommunications and Information Administration:				
Salaries and expenses...	142	142	2,042	763
Total, Department of Commerce.....	3,834	2,683	10,866	9,377
Percent Change in 1982....		-30%		-14%

CONSOLIDATION OF ADMINISTRATIVE OFFICES

Mr. Secretary, are you contemplating consolidating departmental offices such as Congressional Affairs, Public Affairs and Budget? If so, what plans do you have at this time?

We are giving very detailed consideration to the possibility of some sort of consolidation in Departmental offices. It is essential to reduce certain overhead staffing while maintaining the level of program staffing and performance. Consolidation of Department-wide functions seems to offer the possibility of such reductions. However, we will do this on a case-by-case basis -- consolidations will only be made in those functions which offer significant savings.

I would request that before you make any changes in this regard that you contact this Subcommittee. My experience with the Department in the past has shown that decentralization works well especially for a quick response to problems, inquiries, etc.

As you know, Mr. Chairman, whenever we propose significant reorganization we always make a prior notification to your Subcommittee. But in answer to the second part of your questions, we certainly do not anticipate that any improvements we make will reduce our ability to respond to inquiries or problems; what we propose is to provide the same or better level of service with fewer people.

NOAA BUDGET REDUCTIONS

Considering the proposed cuts, what do you envision as the major thrust of NOAA over the next few years?

This Department has not yet formulated a detailed policy for the future requirements of NOAA.

However, given this Administration's desire to reduce Federal expenditures and the Federal impact on private and state/local government concerns, NOAA programs generally will address basic oceanic and atmospheric services and research required on a national, as opposed to a regional or particular-interest, scale.

It is my understanding that OMB has not conferred readily with people in NOAA on any other agency when selecting the programs to be cut. Is this true, and if so, why should Congress go along with budget cuts that are not completely researched beforehand?

The Secretary participated throughout the process of selecting program reductions, conferring with both OMB and bureau representatives. The Commerce budget office prepared numerous alternative proposals for program phaseouts and phasedowns, consulting regularly with bureau personnel on the likely impact of various options. In the case of personnel reductions, final decisions were based on sets of proposals prepared by NOAA program managers. Although the time frame for preparation of the new budget was

necessarily short, the final reductions were the product of considerably detailed analysis, based in almost all cases on information and options supplied by bureau and Departmental budget and program personnel.

PERSONNEL REDUCTIONS

During the subsequent 10-year period, 27 bills were passed by the Congress giving NOAA additional responsibilities: including the Marine Mammal Protection Act; Fisheries Conservation and Management Act; OCS Levels Act Amendments; Ocean Pollution Planning; and Endangered Species; all requiring NOAA to pull personnel from other activities.

Mr. Secretary, if NOAA is cut by 770 personnel in FY 1981 and 1982, the reduction will be very damaging. If this is carried out, NOAA's actual employment level will be 491 below its 1981 level. From 1971 to 1979, 27 bills were passed by the Congress, all increasing NOAA's responsibilities. This reduction will shut down ships, laboratories and entire programs. What justification is there for such drastic action by the Administration?

This Administration is committed to a reduction in the level of Federal expenditures to secure a balanced budget and to thus stimulate American industry.

All Federal programs were subject to review and reductions -- NOAA programs were not exempted.

The Department's personnel ceilings were reduced 8.2% in 1982, or 2,487 positions. NOAA ceilings were reduced 6% in 1982, or 770 positions. NOAA, therefore, was not intentionally singled out for budget reductions.

Primary NOAA functions, e.g., weather, oceans, climate services and research, remain essentially intact. Lower priority programs were reduced.

Part of the cuts will be in non-salmon aquaculture programs including 10 at Milford, Connecticut; eight at Galveston, Texas; and four at Charleston, South Carolina. Why has the Administration selected aquaculture and particularly non-salmon aquaculture for such a reduction?

The Administration chose aquaculture as a candidate for reduction on the basis of its government/business partnership.

Aquaculture is a program ultimately intended for private sector development.

Non-salmon aquaculture (shrimp, scallops, etc.) was chosen on the basis that such high-priced species should provide the economic incentive for the private sector to assume commercial development.

Two major research ships will be moth-balled in order to fulfill the mandated personnel cuts. Considering that NOAA is the lead oceans agency, how do you justify eliminating one-third of NOAA's Class I vessels?

The Administration is intent on reducing overall Federal expenditures.

The NOAA ship SURVEYOR supports the Interior Department's Outer Continental Shelf Environmental Assessment Program (OCSEAP) and thus is not critical to NOAA's programs.

The NOAA ship OCEANOGRAPHER is proposed for lay-up because of its high operating costs and its limited operational flexibility versus other NOAA Class I vessels.

COASTAL ZONE MANAGEMENT (CZM)

The FY 1982 NOAA budget eliminates the Coastal Zone Management program through a $37 million reduction from the Carter budget. The justification states that 25 coastal states have already established coastal zone programs with Federal funds from prior years, and if any further implementation funding is necessary it can be addressed by the individual states.

Of the 25 states with approved coastal zone plans, it is estimated that only 5 states would be able to maintain those plans without Federal assistance. Please comment.

It is estimated that only five states will be able to continue a separate CZM function once Federal aid is discontinued.

An additional 10 states are estimated to be capable of continuing some of their established CZM activities, although not in the context of a separate CZM program.

Therefore, a minimum of 15 states will be able to continue some or all of their CZM activities without Federal funding.

The CZM program has thus resulted in the creation of durable administrative structures and/or programs to guide coastal resource management in 60% of the states in which programs were approved.

Many of the Coastal Zone programs could survive and continue at the state level if the Federal program was phased down over the next two to three years. Do you have any problem with this proposal if it could be arranged? (The Senator proposes using the $40 million CEIP funds that are now under a FY 1981 rescission order to accomplish a phase-down.)

The CEIP rescission was proposed for two reasons: (1) the absence of major and significant offshore and coastal energy impacts; and (2) to constrict Federal expenditures.

The Senator's proposal, while ensuring the termination of the CEIP, does not produce any budget savings. A transfer of the $40 million from CEIP to CZM would require a concomitant reduction elsewhere in the Department to offset the increased expenditures.

There is no certainty that a one or two-year extension of CZM would ensure CZM continuity beyond the 15 states currently projected to continue CZM.

For the record, would you submit a state-by-state breakdown of the impact of eliminating this $37 million program?

NOAA's Office of Coastal Zone Management has completed a staff estimate of the likely effects on state CZM efforts from the proposed phase-out of Federal implementation grants at the end of FY 1981. The estimate is based on NOAA staff discussions with state program managers and is thus subjective in nature. States were grouped into four categories of impact.

Category 1:

States without approved programs unlikely to pursue Federal approval absent §306 funding (7 or 8 states).

1. New Hampshire - Legislation has failed twice and still has opposition. The bill requires Federal funds for the new laws to operate; the prospect of no funds next year makes passage very difficult.

2. New York - Legislation has failed in the Senate twice before. Available Federal funds is a major issue and rationale for the legislation, although erosion legislation might still pass.

3. Virginia - The absence of funding for coal impacts under §308(c)(3) of the CEIP is a major disincentive to seeking federal approval although loss of §306 funds will also have a negative impact.

4. Ohio - In the absence of clear Federal funding support in FY 82 and economic and budget problems within the State, the Governor's Office has postponed indefinitely introduction of the legislation needed for Federal approval.

5. Indiana - Legislation was defeated on March 2; questions of funding availability under §306 created a loss of interest in the bill at Committee hearings.

6. Texas - The Governor of Texas has decided not to submit a CZM program for Federal approval at this time due to uncertainty over both §306 funds and future changes in the Corps of Engineer §404 program.

7. (Possible) Florida - Although the DEIS on Federal approval of the program is out for review, and a FY 81 grant is proposed, the State could decide that initiatives in the area of hazard management and coordination mechanisms are not worth the price.

8. Georgia - Although not currently participating in CZM, the State has kept an eye on the Federal statutes and was considering the possibility of applying for approval at a future date. This is now considered unlikely.

Category 2:

States with approved programs likely to dismantle the CZM agency and efforts if there is an immediate phase out (10 states).

1. Maine - Over 70% of funds have been spent on one-shot projects in towns, which would stop. State support for wetlands and other state law enforcement would return to prior minimal levels, and the program itself would likely cease to exist.

2. Massachusetts - In light of the lack of a program basis in state statute and the severe economic constraints of "Proposition 2 1/2," it is unlikely the Commonwealth would keep the effort going, including excellent state executive orders, local programs, and wetlands laws.

3. Connecticut - The towns have taken seriously their responsibilities under CAMA to review site plans. But Federal funding was a major selling point of the program, and repeal or reduction of authorities could well result.

4. Pennsylvania - The laws are new and the staff is heavily supported by the Federal grant. The program has just gotten underway at a time of severe state budget cuts, and would be unlikely to survive.

5. Alabama - The program is locally oriented, but has been consistently threatened by state agencies in Montgomery, who would likely dismantle most of the program efforts, especially those dealing with hazard mitigation and water quality improvement in the bays.

6. Alaska - The ACMP is already under attack by development interests and state agencies, both unaccustomed to coherent and directive state decision-making. Loss of funds will lead to loss of support from towns and districts who strongly back the program as in their long-term interest.

7. Virgin Islands - In a place where little else seems to, CZM has worked. Although controversial, the program has taken a firm place in the regulatory structure of the Islands. Funding will be a severe problem, however, and could cause repeal of the CZM law.

8. American Samoa

9. Guam

10. Northern Marianas

All three of these programs are recently approved and just getting underway. They are totally dependent on Federal grants for support and if cut off now, would collapse. If sustained, all three could meet important local and regional needs to manage tourism, develop fisheries, site new industry, etc.

Category 3:

States with approved programs likely to shut down a separate CZM effort, but continue the program activities at much reduced dollar levels if there is an immediate phase out (10 states).

1. Delaware - The various state laws, including the Coastal Zone Act, would continue to be implemented at reduced staff and enforcement levels. New approaches and most creative aspects of the program, including permit simplification, would be curtailed.

2. Maryland - After a long slow process building public support and visibility for CZM in Maryland, the State would probably drop everything new and return to basic regulatory functions. Special projects and funding of county CZM "agents" would cease.

3. North Carolina - Although a super program based on a strong state law, there are hearings in 1981 and 1982 related to a 1983 sunset provision. Federal money is very important to survival and continuation of the exceptional work in hazards management. Without it, State efforts would revert to dredge and fill permits.

4. Michigan - The State DNR has already suffered a 47% budget cut due to economic conditions in Michigan. All emphasis on coastal areas within the state regulatory structure would likely be discarded, with the authority implemented statewide at a far lower level of support.

5. Wisconsin - The State DNR would continue to carry out basic laws such as the Shoreline Act at a reduced level of staffing and enforcement. Separate attention to the coastal zone and the continued operation of the Coastal Management Council would probably fall victim to budget constraints.

6. Mississippi - The Bureau of Marine Resources would continue its functions, but the major initiatives to manage wetland areas and help better direct industrial locations would be severely curtailed. The program would continue only its essentially regulatory aspects.

7. Puerto Rico - Special attention given to coastal areas of Puerto Rico would probably be eliminated from DNR programs, including excellent programs of special area management for important lagoon and estuarine areas.

8. Oregon - The coastal focus of LCDC programs would probably be dropped in favor of a single state-wide effort absent the Federal funds. Overall state monitoring and enforcement would probably be reduced, and the pace of approval of LCP's would fall even more behind schedule.

9. Washington - The state would return to the narrow job of carrying out the Shoreline Act; focus on interagency and coast-wide issues such as fisheries would be lost, and monitoring and enforcement would be reduced. Development of clear statements of state authority over such issues as activities on lands adjacent to shorelands would be further delayed.

10. Hawaii - The establishment of clear implementation responsibilities for state agencies under the Hawaii statute will be further delayed, and tension between state and counties could well re-emerge as pass-through funds are reduced or eliminated. Progress made in recent years to work things out between the state and the counties and among state agencies could all be lost.

Category 4:

States with approved programs likely to continue a separate CZM function if there is an immediate phase out, although at a reduced level (5 states).

1. Rhode Island - The institutions are well established and the implementation costs are not that great. Some good support work for the Coastal Resources Management Council may be lost.

2. New Jersey - The CAFRA effort is well-established and has withstood political and legal challenges; the new Waterfront Development Act implementation might suffer.

3. South Carolina - The Council is strong and confident and likely to be supported and budgeted; some creative and long-term work looking beyond permitting actions could well be lost.

4. Louisiana - The political compromises were so painful and the desire of the public so strong to have the state manage the wetlands that the program is likely to survive and be funded from the State's bountiful surpluses.

5. California - The Commission has met and bested far bigger crises than this, which represents a loss of about one-third of their budget. The legislative climate looks good, and as long as nobody cares about LCP's one way or the other, survival with strengths is a good bet.

SEA GRANT

One of the most successful programs in NOAA in terms of drawing on a large cadre of university expertise is the Sea Grant program. Why has the Administration chosen to eliminate Sea Grant in FY 1982?

The Administration is intent on reducing Federal expenditures.

State and local governments, and the private sector are expected to assume greater funding responsibility for those programs uniquely directed to them.

The intent of the Sea Grant legislation is to create a continuing partnership between Federal and State governments; industry, universities, etc., not just to offer seed money for State-run programs. Please comment.

The Administration does not dispute the intent of the Sea Grant legislation.

The Administration does argue, though, that the present and future need to restore and maintain economic vitality of the nation requires that the Federal government reduce its overall expenditures.

To reduce overall Federal expenditures, the Administration has taken the view that grants to states (including the Sea Grant program) primarily serve local and regional interests and, therefore, should now be the domain of those entities and not the Federal government.

It was recently reported by a Sea Grant task force that the total annual net benefit of the Sea Grant program to the nation was about $217 million. Considering the modest amount ($38 million appropriated in FY 1981) to Sea Grant, don't you think that it is a viable program from the standpoint of economics?

The Administration does not dispute the generally positive economic contribution that the Sea Grant program has made.

The Administration does feel that these programs are of state and local concern, directly benefiting those areas.

In the proposed termination of Sea Grant, what studies (or parallels) does the Department of Commerce know of that will guarantee industrial and/or private sector support for the funding of the program -- as suggested by the Administration?

The Department of Commerce does not know of any guarantee of industrial and/or private sector support for the Sea Grant program.

The Department does note, however, that several state legislatures have included Sea Grant program support in their formal budgetary process.

It is expected that the generally positive economic benefits accruing from Sea Grant programs would be a sufficient incentive to attract additional private sector support.

What policy advice was sought from the Congressionally-mandated Sea Grant Review Panel -- prior to the administrative action of proposing to terminate Sea Grant? If none, why?

No policy advice was requested from the panel. In determining where the Federal budget could be reduced, the Administration has sought to transfer back to the states and the private sector the responsibility for programs which benefit local and regional interests more directly than the national interest. The Sea Grant

program was recognized as clearly belonging to this category of program. In view of this primary consideration, other policy issues were not seen as applicable in the termination proposal.

In my letter to you, I recommended conducting an appraisal of the Sea Grant program's economic efficiency. Do you agree that such a proposal would be appropriate?

As you noted in an earlier question, a recent Sea Grant Task Force report concluded that Sea Grant has been highly efficient. Another appraisal may or may not serve to further confirm this finding. It would not, however, affect the Administration's policy on Sea Grant. Despite the program's merits, in an era of fiscal restraint, Federal funds should not be expended on activities which are more appropriately the responsibility of the states. Therefore, further appraisal would not be appropriate at this time.

FISHERIES DEVELOPMENT

Mr. Secretary, you are obviously interested and concerned about the development of our domestic fisheries. This has also been a subject of particular interest to me for some time. What steps have and will you take to insure a more viable commercial fishing industry in this Nation?

The Department, through NOAA, will continue to support the domestic fishing industry. Specific support will be provided by:

- NOAA implementation of the Magnuson FCMA to insure better management of fishery resources, yielding higher landings for domestic fishermen while restricting foreign catch levels;
- Availability of $5.7 million in Fishery Loan Fund targetted to assist shrimp vessel obligors;
- Assistance amounting to $4.4 million to industry for damage to vessels and/or gear; (Fishing Vessel and Gear Damage Compensation Fund, $3.5 million; Fishermen's Contingency Fund, $.9 million.)
- Provision of $10 million for fishery development research and services, and quality, safety, and consumer services;
- Continuation of voluntary inspection and grading of fishery products ($2.7 million); and
- Assuring that American fishing industry interests are well represented in the export promotion activities of the ITA and through the USDA overseas representatives.

What areas of the industry have you identified as in most need of help?

This Administration has not completed its analyses of the fishing industry, its problems, and the requirements for a Federal response.

The NOAA budget proposes over $125 million for fisheries programs in 1982 and over $81 million in loan guarantee authorities specifically for the industry.

The Department is thus cognizant of the requirements of a viable fisheries program, has recommended a budget request consistent with basic goals and objectives, and has focused available resources to address general fisheries problems, rather than concentrating on a single issue.

The Administration is aware of a continued cost/price squeeze in the fishing industry. This squeeze has impacted the shrimp industry and is now spreading to other fisheries. The Administration has targeted relief to the shrimp industry in the form of low-interst loans and long-term marketing and productivity studies. Our analysis of other segments of the fishing industry is not complete, but the negative impacts of rising fuel costs and increased consumer reluctance on purchases is likely to impact other fisheries.

Do you believe that the export of species not in demand in this country can have a beneficial impact on the enormous trade deficit created by our imports of fish and fish products?

It is my goal to promote the export of all American products and to expand the viability of America's industrial strength.

The export of America's fishery products, including nontraditional species, is one section of our overall export policy.

The NOAA budget includes over $10 million in funds specifically directed to fishery development research and quality fishery products.

I have identified the lack of shore-side facilities in this country as a major impediment to the success of the fishing industry. The recently passed law based on the American Fisheries Promotion Act has a provision to add shore-side facilities including processing, dockage, storage freezer space, etc., to the government's loan guarantee program. What are your views on this provision of the law?

This Administration has not completed its analyses of the American Fisheries Promotion Act, nor have recommendations been completed.

General policy of the Administration is to restrict loan guarantee authorities as part of its fiscal austerity program. Therefore, any loan guarantees under the Act would, if enacted, operate under a limitation.

Do you believe that it is in the best interest of this Nation to phase out all foreign fishing within our econmic zone?

Foreign fishing provides the U.S. with a useful trade-off tool to develop foreign markets for U.S.-caught and processed fish.

The U.S. fishing industry's continued development will phase out foreign fishing in U.S. waters and at the same time make a significant domestic economic contribution.

Phaseout of foreign fishing should occur when all fishery resources, including underutilized species, are required by the American industry.

One of the major problems now confronting the fishing industry is skyrocketing fuel prices. Is the Department looking into ways of helping the industry with this problem?

The Department has conducted some industry workshops to look at more efficient means of harvesting. In addition, proposals for S-K grant funds are now being considered to develop energy-efficient vessels.

ELIMINATION OF EDA

Background: Arguments put forth by the Administration supporting the elimination of EDA are:

1) *EDA does not create many new jobs; but transfers jobs from other sectors of the Economy;*

2) *EDA support is a substitution for private investment;*

3) *The cost per job saved or created is between $50,000 to $60,000; and*

4) *Since over 80 percent of the Nation's population lives in economically-distressed areas which are eligible for EDA assistance, the assistance is spread too thin to be effective.*

Mr. Secretary, the Economic Development Administration has been labeled by this Administration as too costly and ineffective to warrant further support. A recent CBO analysis conducted for this Committee provides some interesting facts with regard to some of the criticisms raised. This appraisal looked at assistance provided by EDA from 1976 to 1979 and found:

1) The private sector would not have provided the same level of investment which we leveraged with EDA. According to CBO:

- o 80 percent of EDA's loan guarantee projects would have gone unfunded;
- o 84 percent of the business development loan programs would not have been created; and
- o 55 percent of the public works projects would not have been undertaken by the private sector alone.

2) With regard to costs per job created, we hear a lot about costs of up to $60,000. CBO, on the other hand, tells us that a more accurate measure is:

- o $3,600 to $7,000 per job for the business loan program; and
- o $10,000 to $12,000 per job for the public works program.

3) Finally, CBO says that although the areas represented by 78 percent of the Nation's population qualify for EDA assistance, only 25 percent of the counties eligible were actually served, and that firms receiving loan guarantee assistance represented only 1.7 percent of all qualifying areas.

The results of this analysis are significant because they discredit the broad criticisms leveled against EDA by Administration officials over the past few weeks. EDA is certainly not without fault. I for one have been the strongest critic of the Steel Loan Guarantee Program, a program which has produced such steller performances as the $60 million loan default by Wisconsin Steel. Yet, in EDA we have a financial delivery system which has worked pretty well.

Your own Department budget claims that in fiscal year 1980, an investment of $507 million by EDA will have saved or created 75,000 to 90,000 jobs and leveraged an additional $2.5 billion in private investment -- a 500 percent return, if you will.

This is a program which works and is working, hand-in-glove with the private sector. Why do you believe this agency cannot continue to be an effective tool in addressing structural economic dislocation?

The CBO analysis summarized the findings of previous evaluations and makes some interpretations of the data contained in those evaluations. We do not dispute their findings.

The Administration is committed to reducing the Federal budget, bringing inflation under control, and turning to economic policies which emphasize private sector activity without excessive government involvement. President Reagan's economic policies will bring about an economic environment in which there will be major job creation in the private sector.

ENTERPRISE ZONES

The Administration argues that the way to attract private sector investment into distressed areas and providing private sector jobs to those areas will be through the enterprise zone concept and increasing block grants to local communities. Where is the Administration in the development of the enterprise zone concept? What businesses do they expect to locate to the zones?

The enterprise zone concept is still under consideration; a definitive Administration position will be announced soon.

Many kinds of businesses will be able to locate in the enterprise zones including small and medium manufacturing and service firms. These kinds of firms are the ones which have the greatest job creation potential.

RELATIONSHIPS WITH PROGRAMS OF THE
FARMERS HOME ADMINISTRATION

You have justified the elimination of EDA, in part, by saying that the Farmers Home Administration will continue to provide assistance to rural communities. Yet, the Farmers Home Administration's budget is itself being significantly reduced. What negotiations have you had with the Farmers Home Administration to ensure that needed assistance being provided by EDA will continue?

How much money is involved in these projects?

How does the Farmers Home Administration plan to fund them within their reduced budget?

We have not held any negotiations with the Farmers Home Administration (FmHA) relative to their ability to provide the financial assistance to rural areas that is now being provided by EDA. However, the Administration will rely on a combination of the existing financial assistance programs administered by FmHA, block grants, and the establishment of an enterprise zone program to help rural areas (as well as small metro areas) retain and attract business and promote industrial development and thereby alleviate conditions of unemployment and underemployment in economically distressed areas.

The current pipeline of authorized (not approved) projects that will be adversely impacted by the proposed budget rescission for EDA's program in FY 1981 and the elimination of EDA in FY 1982 is distributed as follows:

	EDA Funds
Development Grants	$205,000,000
Direct Loans	41,900,000
Loan Guarantees	48,300,000
Technical Assistance	5,100,000
Economic Adjustment Grants	10,500,000
Planning Grants	28,800,000

We do not know the actual impact of the reductions on rural development as a detailed analysis would be required to determine the true effect of the proposed reductions; however, EDA normally spends between 45% and 50% of its program resources in rural areas.

The Farmers Home Administration (FmHA) administers several programs that promote rural development: (1) the water/waste loan and grant programs and (2) the community facility loan program. The water and waste program is limited to communities of 10,000 or less; the community facility program to places of 20,000 or less.

Under its water and waste loan and grant program, FmHA could assist those EDA eligible communities that have a serious need for water/waste systems but could not afford them without grant assistance and/or that cannot compete competitively in the municipal bond market. Similarly, assistance provided through the community facilities program could be directed to those EDA eligible communities that have difficulty accessing the municipal bond market.

The above development programs will have to be backed up by other measures, particularly locally-funded capital improvement programs.

SMALL BUSINESS FINANCING

The tax incentives which were in the Kemp/Garcia bill, introduced last Congress, will mean little for small businesses that need more front-end financing. Also by the time the enterprise zones concept is worked out on the Federal level many small businesses will have gone out of business from the lack of available capital. What immediate relief does the Administration propose for small businesses presently dying from the high interest rates? What assurances are there that the private capital markets will respond to the long-term financing needs without some encouragement provided by Federal Government guarantees?

Approval and rapid implementation of the Administration's proposals will reduce inflation and reduce interest rates. In an improved economic environment private capital markets will operate in a manner which will make resources available to small businesses without the need for Federal guarantees.

LOAN GUARANTEE REDUCTIONS

In the FY 1981 appropriation for EDA, $425 million is available for loan guarantees. With the proposed rescission for FY 1981, the Administration has proposed that $262 million be withdrawn for loan guarantees, leaving $163 million. It is my understanding that many applicants have substantially shifted their financial positions relying on favorable assurances from EDA that their applications were in order for approval, only to later discover that EDA could not provide any assistance due to the proposed rescission.

GENERAL ELECTRO COMPANY - HISPANIC FIRM IN HARTFORD:

A case-in-point is the General Electro Company of Hartford, a Hispanic firm which some months ago applied for an $850,000 loan guarantee. The company was within two weeks of closing the EDA loan when all funding was frozen in February pending the outcome of the proposed rescission. Up until that point, while receiving favorable indications from EDA that their application would be approved, several actions occured. The principle officers had invested their life savings, mortgaged their homes, incurred a $20,000 debt in legal fees and left their prior jobs without recourse. Unless this group can obtain financial assistance, they will face certain bankruptcy and personal financial ruin.

I raise the case not to ask for any special treatment for this company but only to point out the effects of what may be a shortsighted and overly aggressive budget reduction. I know that budget reductions must be made, but I don't understand why funding for a program like this can't be reduced at a more gradual rate. Please Comment.

At the time the rescission proposal was developed, EDA had approved $50.1 million in regular (non-trade) guarantees. At the proposed level, an additional $70.4 million would remain available for new guarantees. A total of $42.5 million guarantee authority is available for Trade Adjustment projects. Even though guarantee authority is reduced from $425 million to $163 million, the revised amount is in fact an increase over prior years. Contingent liability in 1979 and 1981 was $119 million and $103 million, respectively.

EDA is reviewing guarantee applications based on the potential economic development impact of the project and based on the financial soundness of the firm.

All pending projects have been reviewed by our professional staff and judged by these criteria. The specific project mentioned was not judged to be a strong application based on the second criterion and was not related as a priority project.

KNOXVILLE EXPO 82

Building Design:

Now that the building design is final, I understand that the original scope has been substantially trimmed back. Originally the pavilion was intended to be an exemplary model of design and efficient energy use or at the very least a demonstrable example of proposed national building energy standards for new buildings in terms of reduced energy use and utilization of renewable resources. The new design has eliminated the biomass generator, solar panels and a power tower.

Will this building which costs over $20 million, and will be a focal point of the Exposition, demonstrate any energy technology?

The Pavilion, costing $10.5 million including design and related fees will actually demonstrate the state of the art in all its HVA (Heat, Ventilation and Air Conditioning) systems. Even with the removal of the biomass boiler and power tower, after the proposed budget was cut from $24 million to $20.8 million, solar collectors on the roof will power a large percentage of the cooling system. The passive solar design maximizes utilization of natural light by omitting solar heat during the summer while allowing heat entry and natural ventilation during the winter. The Pavilion exhibits will portray the latest techniques in energy renewable sources and efficiency technology including biomass and solar power.

Why wasn't the building designed to use the now proposed energy conserving building code standards rather than the less energy efficient current standards?

The Pavilion does comply with the State of Tennessee energy code, and virtually meets the proposed energy conservation building code standards, but because of the ratio of high volume to lower floor space for a special use structure, not covered in the proposed code, there are no prescribed specifications as to how to adjust to meet the standards exactly. It is as close as possible under the building types in the proposed code.

Change To Temporary Facility:

With over three years of planning and design work behind us, and no residual use for the building, is there any possibility that construction plans could be changed to reflect a temporary facility and save the government several million dollars?

In a message received in the Office of the Associate Deputy Secretary on March 25th, Joseph Johnson, Executive Vice President of the University of Tennessee, strongly stated the University is interested in using the Pavilion after the Expo. Changing from a permanent to temporary structure at this time would require redesign, destruction of concrete and steel already in place, renegotiating all contracts, and would save no money. More likely, costs would be increased when demolition and removal is considered. Also, there is not enough time available to permit changes of such magnitude.

Washington Headquarters Expo Staff:

Future expositions are currently being planned in Vancouver, Alaska, Japan and New Orleans (1984). I understand that a rather sizeable Washington Headquarters Staff is being established to oversee U.S. participation and that for the Knoxville Expo alone there will be 22 personnel. Why is such a large staff needed? Can you submit to this Committee a list of positions and salaries of all Washington Staff anticipated?

Congress approved 25 positions for the Knoxville U.S. Pavilion. We will need these positions to get the Pavilion designed and built; exhibits designed and fabricated; an IMAX film produced; and operate the Pavilion during the Fair. All of these positions are term appointments, not permanent Exposition Staff, and will leave when the Fair closes. There is presently a staff of 9 working in the Washington Headquarters for the Knoxville U.S. Pavilion. This number will fluctuate to reflect staffing changes brought about by changing EXPO needs. Eventually, there will be only 3 positions assigned to Washington. The remaining positions will be assigned to Knoxville. Per your request, the personnel list and grades for the positions that will be assigned to Washington during the fair are provided below.

	Grade	Salary
Administrative Officer	GS-13	$32,048
Budget and Fiscal Officer	GS-12	26,951
Secretary	GS-7	15,193

Exposition or World's Fair for 1984:

The City of New Orleans plans to host an exposition on rivers and fresh water in 1984.

How does the U.S. plan to participate?

The Department of Commerce has no participation plans as of this date. The New Orleans application is currently under review within the Department and until the application is recommended by the Secretary and approved by the President we cannot develop participation plans.

What commitments have been made to date? Exhibitry? Pavilion?

None. See answer above.

Is New Orleans going to be a world's fair or a special category event?

If approved, New Orleans will be a special category event.

Are there any other world's fair or exposition plans for the United States?

We have nothing formally planned by the Department. Houston, Texas; Columbus, Ohio; Takoma, Washington; Sacramento, California; and Chicago, Illinois all have expressed interest in fairs or expositions for various years. However, no formal applications have been received to date.

FY 1981 ANTICIPATED CENSUS SHORTFALL

Last year the Census Bureau requested a $50.2 million supplemental to cover a deficit for the fiscal year 1980 decennial census. Due to budget constraints the additional appropriation approved by the Congress was limited to $27 million, $10 million of which was earmarked for litigation costs. It is my understanding that the Census Bureau submitted a request for the remaining $33 million shortfall in a 1981 Supplemental yet OMB has limited the Supplemental request to $24.2 million. Due to the fact that Census is currently involved in 43 lawsuits around the country and is also trying their best to meet publications schedules, I am concerned that they may run out of funds as early as June even if we approve the entire additional request. In your estimation, will the Census Bureau be able to meet its commitments with funds requested?

NOTE: The following reasons have been identified to justify the deficit:

- *-- 1.5 million more housing units;*
- *-- unexpected postal costs;*
- *-- lower than expected enumerator productivity;*
- *-- large numbers of unclassified addresses;*
- *-- delayed district office closings; and*
- *-- increased demands from courts for additional verification.*

1981 operating plans for the Decennial Census have recently been revised to allow for scheduled completion of essential activities, assuming that our $23 million program supplemental and $7 million pay act supplemental requests are approved in full. Census counts for legislative redistricting will be available April 1, as planned. This has been accomplished by delaying all programs not essential for completion in 1981. Operating plans for 1982 and 1983 are being revised accordingly.

Is there any money in the Census budget for litigation requirements and court ordered actions?

In 1980, Congress appropriated $10 million as a contingency fund to cover the cost of court-ordered actions. OMB has directed that this amount be used to offset 1981 operating costs, thereby reducing our supplemental request by $10 million. Therefore, no funds are currently included in the Census Bureau budget for litigation-related needs.

PUBLIC TELECOMMUNICATIONS FACILITIES GRANTS

A rescission of $25.7 million has been proposed for Public Telecommunications Facilities grants. When coupled with the 25 percent reduction in funds for the Corporation for Public Broadcasting it becomes clear that public broadcasting assistance registers as a low priority item in the budget. I, for one, think that the quality of commercial television has reached an all-time low. The Federal Government should be aggressively supporting public telecommunications and not pulling back on support. Mr. Secretary, I would be interested in hearing your views on this subject.

First, I would like to point out that the quality of public broadcasting has reached an all-time high, in part due to the Federal matching dollars provided by the Public Telecommunications Facilities (PTF) program, which have served to encourage the development of the public broadcasting systems as we know them today. In 1962, when Federal support for public TV began, only 76 stations were on-the-air serving less than a quarter of the American population. In 1967, when Federal assistance was expanded to include public radio, only 67 of the nearly 400 noncommercial radio stations were providing community-wide services qualifying them for financial support from the Corporation for Public Broadcasting (CPB). Today, there are 292 public TV stations on-the-air and 217 "full service" public radio stations which are CPB-qualified. Over 90 percent of the population now receives at least one public TV signal and about 70 percent receives some public radio services. The PTF program was intended originally as a "seed money" program to stimulate non-Federal sources of funding for the development of public broadcasting facilities across the country, and over the past two decades, this objective essentially has been reached. In recent years, public broadcasting has enjoyed increasing support from other non-Federal sources such as businesses, subscribers, and foundations. At this time, when highest priority must be placed on reducing Federal spending, support for public broadcast facilities is no longer an appropriate burden for the Federal Government to bear.

Since the Corporation for Public Broadcasting is not part of the Department of Commerce I am not in a position to discuss details of their proposed reductions. However, it is my understanding that the reductions were directed toward reducing administrative costs and centrally funded program production. The Community Service Grants (CSG) program which provides funds to support local stations will not be affected.

In regards to the rescission of grant money, State organizations and local assistance have already pledged matching funds for these facility grants. How can you justify eliminating this program so abruptly?

From the point of view of the grantee, there is never a "good time" to cease support of any special grant-in-aid program, such as the Public Telecommunications Facilities (PTF) program. The new Administration has had to confront head-on the economic crisis of this country. In this light, the termination of PTF has been recommended.

However, it has served the American people well and has provided a very substantial base for the continued availability of such services. The Administration believes that matching funds already committed for the proposals applying for 1981 funds will, to a large extent, be applied toward initiating a substantial portion of such proposed projects.

DEFERRAL AND RESCISSION

The Administration has proposed a deferral of $92 million in FY '81 for construction differential subsidies. The action assumes that two ships rather than four will be contracted for in FY '81 and that two ships will be contracted for in FY '82. This proposal replaces the Carter budget which planned for six vessels in the two years. The deferral message also states that this action "may preclude the Government subsidization of pollution retrofits on privately-owned subsidy-operated tankers". What further detail can you give us on the estimated effects of this deferral?

The deferral of $92 million in ship construction subsidy funds from Fiscal 1981 to 1982 will provide sufficient appropriations to permit contract award of two bulk carriers, including allowance for a slight increase in price due to a delayed contract award date. The remaining funds should also be sufficient to: (1) allow the government to provide for the pollution retrofit of one tanker; (2) cover allowances for essential changes to ships currently under contract; and (3) provide an offset for anticipated additional escalation on newbuildings due to the present rate of inflation. Other normally funded CDS budget expenditures covering items such as: accepting vessels for trade-in to the reserve fleet; funding for changes under contract (other than essential modifications); and providing for retrofit of national defense features according to public law 96-387 will not be funded.

Several projects identified by CDS applications which have already been received and are now under review will have to be either denied or delayed beyond 1982.

These include:

(1) two bulk carriers;
(2) conversion and enlargement of four Moore McCormack Lines vessels, MA Design: C4-S-60a;
(3) conversion of three American President Lines LASH ships;
(4) pollution retrofit for six Apex Marine (Berger Group) tankers and OBO's;
(5) pollution retrofit for three Margate Shipping tankers;
(6) national defense features for HESS Oil Company Title XI integrated tug barges; and
(7) national defense features for Title XI Ingram tankers.

Are we serious about building a new fleet or are we just contracting for two more vessels in 1982 to provide financial assistance to an ailing industry?

The Administration is projecting a funding level for construction differential subsidy of $100 million for each year in the period 1983-1986, pending a review of the maritime policy alternatives that will address all aspects of the maritime industry, including the size and age of the fleet and its several segments. It is too early to say what the review will conclude with respect to a new fleet. As to shipbuilding, the Administration foresees that a significant level of shipyard activity will be generated by the expanded Navy shipbuilding program. The two-ship level of construction differential subsidy funding in 1982 will continue the program at a steady but reduced level and, for now, will assure a modest continuum of commercial ship construction.

What effect will the proposed rescission of $2.5 million for maritime research and development efforts have on those programs? Are there any projects already planned which will be eliminated?

Because of the rescission of $2.5 million, we will reduce the amount of longer term research that we do, and concentrate on the shorter term quick pay-back projects. Included is research into the economics and conceptual designs for various types of plant vessels, navigations and communications technology and arctic shipping. The Computer Aided Operations Research Facility (CAORF) will be slowed by phasing down independent projects and will concentrate on funding projects on a cost shared basis.

In the President's deferral message of March 9 for the Maritime Administration, he states that the Administration plans a full review of maritime policies and that uses for the deferred funds are yet to be determined.

Has a review of the maritime policy been completed?

The Administration review of maritime policies is not complete.

Since there is no specific use identified for these funds, wouldn't it be prudent for this Committee to rescind this $92 million and allow the Maritime Administration to come back with a supplemental request for FY 1982 once maritime policies have been revised?

The statement in the deferral document concerning specific uses of the $92,000,000 was not intended to prejudge the outcome of the policy review or to slow down contracting. It is the Administration's desire to continue the program at a reduced rate through 1982. The Administration's request for approval of a two-ship program level in 1982 is backed up by two in-hand applications for a total of four dry bulk ships. A program level of $100 million per year from 1983 on is definitely contingent on the policy review which is just now getting underway.

Retention of the $92,000,000 is essential in order for ship operators and shipyards to continue to have a basis for current negotiations and planning relevant to FY 1982. For this reason, and the fact that requirements are already known, supplemental funding would not serve as an appropriate alternative.

COORDINATION WITH NAVY

What coordinating functions have been conducted by your office and the Secretary of the Navy to determine the size and make-up of both this country's maritime shipbuilding base and actual private maritime fleet? What coordinating missions are planned?

The Navy and MarAd continually work together to evaluate the U.S. shipbuilding and shipyard repair capability to meet contingency mobilization requirements. In 1977, MarAd in cooperation with the Navy published a detailed study which evaluated our shipyard requirements in 1978 and projected for 1984. This study was updated in 1979 to reflect the changes in our capability to meet the shipyard requirements for the critical first 90 days. As recently as January of this year, MarAd and the Navy contributed to a study conducted by the Institute for Defense Analyses on the U.S. shipbuilding capabilities to meet current and surge demands for new ship construction to meet various levels of Navy construction.

The Navy and MarAd coordinate with each other and with other DoD agencies in developing requirements for numbers and types of ships in the privately-owned merchant fleet, for defense features necessary for those vessels, and on development of plans for marshalling and wartime use of the vessels.

At the staff level, Navy and MarAd are now working together to reevaluate the shipyard mobilization capability and determine the effect on the mobilization base resulting from changes in the current programs. At this time, Navy, MarAd, and JCS staffs are engaged in ship requirements work and emergency planning. The new Secretary of the Navy has indicated his desire to meet with the Assistant Secretary of Commerce for Maritime Affairs. When Administration staffing of Assistant Secretary positions in the Navy and Commerce Departments is sufficiently complete, that meeting will be held. The work presently underway at the staff level will be on the agenda.

STEEL INDUSTRY POLICY

Since the Cabinet has been formed there has been much interest concerning the numbers of committees formed to address particularly significant national problems. Has a committee looked at the problems of the steel industry? If so, has any consensus been found as to a specific approach to solve these problems?

Since the six Cabinet councils were formed in mid-February, the steel industry has not been the subject of specific Cabinet-level attention. In the event that steel industry issues are addressed by the Cabinet, it is likely that discussions would take place first in the Council on Commerce and Trade under the leadership of the Secretary of Commerce.

There is a broad concensus that modernization is essential in any program for the domestic steel industry. In this regard, the tax proposals contained in President Reagan's Economic Program would benefit the steel industry directly. The reduction in taxes resulting from the proposed new methods for calculating depreciation expenses would increase the incentive to modernize and improve the internal cash flow to aid financing of such investments in the steel industry.

The steel industry would also benefit indirectly from the effects of the President's tax proposals. Because the demand for steel is affected by the overall level of capital investment, the steel industry would benefit from the stimulus to investment in plants and equipment in other industries affected by proposed liberalization of depreciation allowances.

FOREIGN COMMERCIAL SERVICE

Mr. Secretary, in April 1980, pursuant to Reorganization Plan Number III, the Foreign Commercial Service was transferred from the Department of State to Commerce.

Do you feel this transfer has in any way improved the performance of the Foreign Commercial Service?

The ultimate test of improved FCS performance will be seen in the effectiveness of its officers and staff overseas. Commerce received responsibility in April 1980 for the FCS in 65 major market countries accounting for over 90% of U.S. manufactured exports. Because of the very short leadtime before the transfer, Commerce accepted the existing personnel in place to assure continuity of FCS functions. We are now completing the first of three annual cycles of selecting a new professional corps of dedicated commercial experts to replace existing State Department staff. We will have our first 50 career professionals in place this fall. Thereafter we can begin evaluating the effectiveness of FCS personnel.

Meanwhile, we can be evaluated on the basis of management plans and actions to date that were undertaken to assure an improved system of operations once our new professional staff is in place. Some of these measures have clearly improved commercial performance. The more visible of these include: (1) enhanced status of the commercial function and senior commercial officers at our Embassies; (2) a closer, more active working relationship with business organizations on the day-to-day priorities and functions of the FCS; (3) more integration of FCS plans and operations with the Washington support offices and 47 district field offices around the United States.

Less visible but vital for near-term improvements in FCS performance are management efforts in the following areas:

Personnel Policies and Practices: (1) FCS has set the minimum standard tour at four years to assure greater continuity and effectiveness than the present 2 or 3-year minimum tour applicable to State officers. (2) With private sector expertise we are completing development of graduate-level quality training to upgrade our local nationals and career professionals in management, commercial policies and practices, intercultural skills, etc. (3) With private sector assistance we are developing and expanding opportunities for our American and local national officers to obtain in-depth briefings and consultations, at industry headquarters both in the United States and abroad.

Integration of Overseas and Support Functions: (1) A series of coordinating groups is being developed which meet regularly to assure close integration of program and response efforts from U.S. district field offices to the 124 FCS posts abroad. Coordinating positions will be established in FCS Headquarters and staffed on detail by personnel from other parts of Commerce. (2) A joint effort will be initiated with the U.S. Travel Service to integrate tourism and trade promotion through assignment of FCS tourism positions in locations not now served by USTS.

Program Improvements: We will work with other parts of Commerce to: (1) develop performance objectives and standards at a country marketing plan level, so that FCS programs and personnel can be judged in terms of their contribution both to the service demands of U.S. business and to increases in U.S. export earnings; (2) improve specific commercial information and contact programs which suffer from slow response times; and (3) improve FCS' ability to service medium and small businesses, including expansion of tourism and Foreign Buyer programs and pilot efforts to provide one-stop all-purpose business services for an at-cost fee using contract services.

More Productive Relations with U.S. Business: FCS Headquarters has initiated efforts to improve the effectiveness of our individual officers through cooperative and work-sharing relations with business.

These efforts include: the industry consultations program described above and a "cooperator program" in which industry associations would assign representatives abroad to develop and implement a comprehensive plan to achieve specific trade objectives. Both FCS and the association would have specified responsibilities for its implementation and one such agreement is now under discussion.

What do you perceive as the priority functions of the Foreign Commercial Service?

The overall FCS mission is to promote U.S. commercial and investment interests in 66 countries abroad, particulary the expansion of earnings from exports of goods and services. Within this objective, the FCS has four priorities:

1. To assist U.S. business abroad by effectively responding to its trade promotion, investment facilitation and commercial information needs;

2. To support expansion of goods and service exports through planned promotional events including trade fairs, trade missions, seminars, buyer programs, etc.;

3. To promote and protect U.S. commercial and investment interests through discussion with host governments whenever our commercial opportunities or interests are at stake; and

4. To advocate to U.S. policymakers the concerns and problems affecting U.S. trade and investment interests abroad.

Within these general priorities, the primary FCS emphasis is to delegate to our managers at FCS posts the responsibility for determining how best to use U.S. Government resources for development of U.S. trade, commercial and investment interests according to the special needs, opportunities and characteristics of each market.

Four specific program priorities are worth mentioning:

- To follow up on commercial opportunities arising from the Multilateral Trade Negotiation agreements and particularly from the Government Procurement Code.

- To give close consideration during planning of trade and promotional activities to U.S. industry sectors and products identified by Commerce Department analysis as having highest growth potential in their markets.

- To increase FCS attention and priorities for tourism. In particular, the FCS will focus on the expansion of the Foreign Buyers Program, which brings groups and individual visitors to major fairs and exhibits in the United States and which has proven to be a very effective travel promotion technique.

- To conduct an intensive review of important commercial intelligence gathering and informational programs to assure that these programs (Agent Distributor Service, World Trade Director Report, etc.) operate promptly, effectively and economically.

Do you believe it would be helpful to enact into law provisions which would clearly outline the structure and duties of the Foreign Commercial Service?

Over the past year, we have had to adapt the responsibilities of the FCS to a variety of changing circumstances and demands. We have not found that the absence of such legislation has in any way limited our ability to establish either the structure or definition of responsibilities of the Service. Not only has it proven unnecessary, it could conceivably limit our ability to meet emerging needs if the legislation did not happen to provide sufficient discretionary authority for adjustment.

For this reason, we continue to oppose such legislation as being essentially unnecessary and potentially detrimental if it were to dilute or restrict the use of the Foreign Service authorities that were made available under the Reorganization Plan.

Do you have any plans to expand the personnel resources of the Foreign Commercial Service?

Our FY 1982 budget request is for $35,987,000 and 693 positions. An important provision included in this budget is the flexibility for hiring 5 positions to begin staffing a Headquarters management capability for the FCS. In addition the 1982 budget request reflects Administration plans to give increased emphasis to tourism promotion in recognition of its recent rapid growth, its status as our fourth largest export earner and its additional growth potential. The Department is seeking $1,100,000 and 30 positions for this purpose in the FY 1982 budget. We are currently reviewing long-range requirements for FY 1983 and beyond and will be prepared to handle these requirements through the normal FY 1983 budget process.

SMALL BUSINESS EXPORT EXPANSION

Mr. Secretary, last year the Congress passed and the President signed P.L. 96-481 which included the Small Business Export Expansion Act.

Under P.L. 96-481 the International Trade Administration is to fund 50 percent of the cost of Small Business Export centers around the country. One million dollars was provided for this program in the continuing resolution for 1981.

It is my understanding that this Administration proposes to rescind the million dollars provided in the FY-81 continuing resolution for funding 50 percent of the cost of Small Business Export Centers. Mr. Secretary, does your Department currently plan to implement this small business program?

Implementation of this program is being deferred in line with President Reagan's desire to reduce the Federal Budget.

What other actions is the Department of Commerce contemplating to improve export performance by small businesses?

The Department of Commerce intends to vigorously pursue the refinement and expansion of the existing export assistance programs and services which over the years have proven to be of greatest assistance to the small business community.

These include Commercial Exhibitions, Trade Missions and Seminars, World Traders Data Reports, Agent/Distributor Service, Trade Opportunities Program, New Product Information Service, Seminar Program, Product Marketing Service, Export Mailing List Service, Foreign Buyers Program, and the Worldwide Information and Trade System.

In addition to these programs, we will continue to solicit the opinions of the small business community regarding new programs which may be of assistance to potential exporters.

Do you believe your Department's personnel recognize that small businesses require more indepth export information and assistance and are they addressing these small business needs?

It is the policy of this Administration to provide assistance to those most in need of government help. This applies to our export assistance programs in particular. And our personnel are well aware of this policy.

In the area of export assistance, it is widely recognized that those companies least experienced in overseas marketing need the most help. Over the years our export assistance programs and services have been designed to assist the inexperienced exporter and this Administration intends to refine and improve upon these programs and services. Admittedly, a few larger manufacturers who have concentrated on the domestic market need exporting encouragement and assistance, and our programs are clearly useful to them. However, most inexperienced exporters are small, and it is for these companies that our programs are of the greatest benefit.

The existing Commerce programs which have proven to be of particular importance to the small business community include business counseling and export awareness seminars—programs that focus on the mechanics of exporting.

There are potential sales identification services such as the Trade Opportunities Program, the Export Mailing List Service, The Worldwide Information and Trade System, and the Foreign Buyers Program. Overseas promotion vehicles of great use include commercial exhibitions, trade missions, catalog exhibitions, new product information service, and the product marketing service.

Trade facilitation programs such as the World Traders Data Reports and the Agent/Distributor Service are frequently requested by small businesses.

The U.S. Commercial Service provides the basic delivery mechanism for the aforementioned programs and services to the small business community. The Industry Relations Branch within the U.S.C.S. works with trade associations and other industry organizations to promote exporting and the use of Commerce export assistance programs and services. At the same time it solicits input directly from industry on its needs for various export assistance programs and services. This information is then used in the development of new programs and the modification of old ones to better suit the needs of the business community, and the small business community in particular.

Does your Department coordinate its small business export promotion efforts with the Office of International Trade at the Small Business Administration?

In December 1976, the Department of Commerce and the Small Business Administration entered into a cooperative agreement that coordinates our relationship in international trade promotion activities throughout the United States. The purpose of this agreement was to ensure that the Nation's small business community

benefitted fully from the resources of both Commerce and SBA and that, to the greatest extent possible, any duplication of effort was eliminated. The Department of Commerce is presently working with SBA's Office of International Trade to recast the agreement to reflect the Trade Reorganization and changing priorities of the 1980's.

What do you see as the role of the Small Business Administration in the area of export promotion?

The cooperative agreement between the Small Business Administration and the International Trade Administration is intended to maximize the Government's export promotion assistance to small business including such considerations as: (1) joint training to increase appreciation by professionals in SBA and Commerce of the objectives and problems of each in working with small firms; (2) participation in seminars and conferences through joint sponsorship of such events; and (3) shared publications to widen circulation of literature promoting international trade opportunities to small business firms.

Each of the foregoing broad categories includes many specific opportunities for cooperation that will multiply the trade promotion efforts of both Commerce and SBA and reduce redundancy in their service to small business.

WITS (WORLDWIDE INFORMATION AND TRADE SYSTEM)

Mr. Secretary, the WITS System has received considerable Congressional attention over the past two years and has been the subject of some controversy. What are this Administration's plans concerning the future of the WITS System?

Information is the key to increasing exports. Studies and direct feedback from companies all confirm this fact. We also know that many existing programs are somewhat deficient in their ability to provide this information in a timely manner since many are completely unautomated. Data is slow to reach companies that need it and often cannot be located without great effort. This Administration is fully committed to the WITS System, which will bring modern information processing and communications capabilities to our export information activities. Before we move ahead with implementing the existing plans for WITS, however, we believe it is prudent to review carefully the current objectives for WITS and its key features. This review should be completed shortly.

Stage I of the WITS System, which was to go into operation October 1 of this year, has already suffered some delays. We do not believe our review will lead to further delays, but, in fact, may permit us to accelerate our automation of existing programs.

TRADE EMBARGO

Mr. Secretary, in the past I have been critical of the Carter Administration's half-hearted response to the brutal and ominous Soviet invasion of Afghanistan. Specifically, I have stated that the only meaningful response to the Soviets invasion is a total embargo. What are the current figures on U.S.-Soviet trade since the invasion?

In 1980 U.S. exports to the Soviet Union totalled $1.510 billion, of which $1.047 billion were agricultural commodities. These figures represent a sharp drop from 1979 when exports totalled $3.604 billion, including $2.855 billion in agricultural commodities. Imports from the Soviet Union totalled $.453 billion in 1980, compared to $.749 billion in 1979.

Could you provide for the record a breakdown of trade by category and a comparison between actual trade and projected trade in the absence of the current embargo?

The table below provides a breakdown of the statistics for 1980 U.S.-U.S.S.R. trade along with our estimate of what that trade would have been in the absence of the post-Afghanistan sanctions. We have also included our projection for trade in 1981, both with and without the trade sanctions.

U.S.-U.S.S.R. Trade: 1979, 1980 and 1981
(Millions of Dollars)

		1980		1981 Projected	
	1979 Actual	Actual with embargo	Estimated without embargo	With embargo	Without embargo
U.S. Exports	$3,604	$1,510	$4,800	$1,700	$5,000
Agriculture	2,855	1,047	3,900	1,250	4,000
Non-agriculture	749	463	900	450	1,000
Phosphoric acid	93	17	400	—	500
U.S. Imports	873	453	800	600	1,000
Gold	549	88	100	200	300
Ammonia	56	95	120	150	500
Total U.S.-U.S.S.R. Trade	4,477	1,963	5,600	2,300	6,000
U.S. Surplus	2,731	1,057	4,000	1,100	4,000

What is the status of the Administration's decision on the future of the grain embargo? What are the primary factors being considered and when do you expect a final decision? Do you envision a role for the Congress in implementing whatever decision is made?

The future of the grain embargo remains under review. It would not be appropriate to lift it at this time because of the signal it would send to the Soviets. It has to be considered in the context of our total relationship to the Soviet Union. Any change in the partial grain embargo must take into account both the economic and foreign policy interests of the United States. Action regarding the grain embargo must also dovetail with our strategy on the 5-year U.S.-Soviet grain agreement which expires in September.

I would welcome your suggestions for a Congressional role in implementing whatever decision is taken on the embargo. Meanwhile, the Administration will remain in consultation with Congressional leaders on this matter.

AUTOMOBILE IMPORTS

Restriction of imports in response to the decline of the U.S. auto industry has been a matter of controversy in the Administration and the Congress. Your views on this matter are well known.

In your analysis of this problem, Mr. Secretary, what do we gain from restricted imports?

The purpose of restricting imports is to give the U.S. manufacturers sufficient breathing space to maximize the benefits that will come from the expected recovery of the auto market. This would provide the U.S. industry with added sales, employment and cash flow. As a result, the industry will be better able to internally generate its cash flow needs and to raise capital in the financial markets. Having said this, I do not want to overstate the results from restricted imports. They alone will not save this industry and enable it to generate the $65 billion it plans to invest in the next five years nor recover the 1,600 dealerships it lost in 1980.

Lack of restraints could endanger the industry's ability to generate its capital needs and complete the restructuring necessary to enable the industry to lower its production costs and become more competitive. Thus, a temporary restraint can be viewed as an investment which will assist the U.S. companies to be able to compete in an unrestrained market.

What will be the effect on employment in the auto industry?

A forecast of any economic variable depends on the assumptions one makes. Without going into the details of these assumptions, we use a generalized measure of each 100,000 additional U.S. car sales resulting in an additional 20,000 jobs to the auto industry and its suppliers. I caution that this is a rough measure, but it can be used for estimation purposes.

But the principal point of restriction is not a short term employment gain — it is to allow industry to make the investments necessary to compete in the long run. Certainly as the industry becomes more productive there will be fewer jobs per car. The point of a restriction is to have a strong industry with greater sales and a larger market share. I believe that without restraints more jobs will be lost than if a short-term restraint is used.

Will import restrictions restore profitability to Ford and Chrysler or simply strengthen General Motors' predominant market position?

Import restraints alone will not restore profitability to Ford and Chrysler. Only a recovered market and a larger share of that market for Ford and Chrysler will do this. Restraints will increase these companies' cash flow beyond what it would be in an

unrestrained market. With regard to General Motors' market position, General Motors is currently very strong and can be expected to remain so. Chrysler and Ford are offering new, fuel-efficient cars which consumers are accepting. It is noteworthy that Chrysler's 1981 Corporate Average Fuel Economy of 25.6 mpg, is the highest of these three companies. Chrysler is followed by General Motors at 23.1 mpg and Ford at 23.0 mpg. Consequently, Chrysler appears to be very well positioned to meet consumer demands for fuel-efficient vehicles. In addition, Ford will shortly have the capacity to produce around 700,000 Escort/Lynx based cars and has been making the rest of its fleet more fuel efficient. This is still an enormously competitive market and one which is very difficult to predict, but I do believe that import restraints on Japanese vehicles will benefit all domestic manufacturers.

How will American consumers respond to the curtailment of Japanese products which they have judged in the past to be superior to domestic models?

This depends to a great extent on the level and duration of import restrictions. Most analysts believe that there is a large amount of consumer demand which is waiting for economic conditions to improve before purchasing automobiles. I hope these consumers who have been deferring their purchases will begin buying shortly. When they do, I believe they will look at the new U.S.-made cars and find that in terms of the overall product they are competitive with the Japanese autos.

The new U.S. models are the highest quality and most fuel-efficient the industry has ever produced. But it will take a while for consumer perceptions of U.S.-made cars to change. Import restraints should serve to encourage potential buyers to go into U.S. car dealerships, and drive the new cars. Once they do this I think many of them will like what they see and will buy.

Let me just mention that last year 1,600 U.S. car dealers — most of whom are small businessmen — had to close their doors. Temporary restraints can help the remainder to continue doing business and, in some cases, remain in business.

Many who speak of import restrictions reducing competition in the marketplace often ignore the fact that under a clearly temporary restraint the consumer still has the option to defer purchases. This option keeps the pressure on the domestic companies to produce high quality cars which the consumer will buy.

What in your analysis would be the cost of such a policy in terms of:

retaliatory import restrictions by other nations?

The very nature of voluntary restraints precludes retaliation. This is the advantage of voluntary restraints as opposed to increased tariffs or quotas. Both of these latter two forms of import restraints, if done by legislation and not as the result of the import relief process contained in Section 201 of the Trade Act

of 1974, would contravene the GATT. Thus, our trading partners whose exports are restrained would be authorized to take retaliatory action. Since a voluntary restraint is agreed to by the exporting country, retaliation is not an issue.

increased prices and lower quality for U.S. consumers?

Many fear that restraint on Japanese cars would drive car prices up sharply. I do not agree. I believe existing market forces would minimize any price increases. I do not believe Japanese auto firms would try to soak the market for all they could charge during a period of temporary restraint. They would be too concerned for the effect this would have on their market position once restraints were ended. On the U.S. side, a powerful market force which would hold down any price increases is the fact that we now have the capacity to produce an additional one million fuel efficient small cars. That means that even if Japanese exports were restrained, there would be stiff competition among U.S. car companies to get the added sales. The U.S. companies know that they have to compete in a long-term, unrestrained market and they know that they cannot price themselves out of this market.

I do not expect quality to be reduced during a temporary restraint. The industry must use this period to marshall its resources in order to compete strongly when restraints are lifted.

increased fuel consumption brought about by encouraging the purchase of less fuel-efficient cars?

We believe that with U.S. industry currently having capability to produce an additional one million fuel-efficient cars annually, the fuel consumption costs of import restraint will be minimized. In fact, there may be very little change. The U.S. fuel-efficient cars offer mileage ratings equivalent to or better than the best selling Japanese cars. Furthermore, General Motors' new J cars and Ford's new sporty cars (EXP and LN7) will be introduced this spring and will offer the consumer even more fuel-efficient cars. The fuel consumption costs over the duration of restraint are not known, since the Environmental Protection Agency can not yet test the 1982 and beyond car fleet. The restructuring plans of the U.S. industry are known and more fuel-efficient cars are known to be on the way. Both Ford and General Motors will introduce diesel engine small cars soon and General Motors hopes to have an electric car in 1984. These developments, combined with technological advances and further weight reduction will increase the fuel efficiency of the U.S. car fleet. General Motors has projected that its Corporate Average Fuel Economy (CAFE) will be 26.1 in 1982, 28.6 in 1983, 30.6 in 1984 and 31.0 in 1985. Ford expects a similar progression.

What formal or informal negotiations have been conducted with the Japanese on this matter?

We have held discussions with the Japanese, most recently with Foreign Minister Ito, about conditions in our industry and in general terms about how they could assist us. But, there have been no negotiations over a specific restraint agreement.

As President Reagan announced on March 24, we will shortly begin discussions with Japan on the auto situation in both countries. These talks will attempt to define those steps which are, in the long term, in the best interests of both countries. But I repeat, no negotiations have yet been conducted.

Do you believe a consensus can be reached between Japanese government and industry and what would such a consensus look like?

It is really too soon to answer this question. The Japanese government is very well aware of our problems. They are ready to assist us, but the Japanese auto companies also have some concerns which will need to be addressed. We know they are concerned about our antitrust laws and will obviously have other concerns which will be identified when, and if, import restraint negotiations are conducted. Although it is premature to speculate on its nature, I do believe that such a consensus can be reached.

LAKE PLACID

The $4 million final bailout for the Lake Placid Winter Olympic Games of 1980 was finally omitted from the FY 1981 Appropriations Bill. It now looks like the State of New York may pick up the tab with priviso that ownership of the sports facilities be transferred to the State. Have you received a request for any assistance to the Lake Placid Olympic Games?

Since the request for $4 million, EDA has received no formal request for additional assistance.

OLYMPICS

Senator Hollings and I have been frustrated by the awkward positions that this Committee has been placed in regard to funding for the Olympics. In the past, Federal participation was conducted by the Department and the commitments were made prior to any notification being made to this Subcommittee. We have discussed this matter and feel the only responsible approach for funding any Olympic Sports activities in the future is for this Committee to be involved with all policy considerations from their inception. Do you have any views on this matter?

We agree that the Congress should be involved.

Have any requests been made or any discussions held concerning Federal support for the Summer Olympic Games to be held in Los Angeles in 1984?

Discussions were held. No commitment was made nor was any encouragement offered.

Would you please see that this Committee is informed if any request does arise?

We will inform the Committee of any such request.

Questions Submitted by Senator Hollings

INTERNATIONAL TRADE ADMINISTRATION

What progress has been made in firming up a U.S. negotiating posture for the renewal of the Multi-Fiber Arrangement, and could you explain Administration objectives for this negotiation?

We expect to have our initial negotiating position on renewal of the MFA by early May, in time for the next meeting of the GATT Textiles Committee. In this process, we will consult with Congress and with representatives of interested private sector organizations.

The MFA allows a 6% annual growth rate in most apparel categories. This even applies to such countries as Korea, Taiwan and Hong Kong, whose industries are now well developed. When combined with certain flexibility provisions, these growth rates can swell to 24% in any given year, causing obvious trade disruptions to American industry.

How specifically will the United States address this fundamental problem?

The current version of the MFA allows for exceptions to these growth and flexibility numbers. We have already concluded consultations with Hong Kong and Korea and have begun talks with Taiwan for substantial reduction in flexibility in the 1982 quota year. The talks with Hong Kong and Korea resulted in reductions in the growth of maximum export limits for fully utilized ceilings of major import-impacted categories. Similar agreements were reached for trade from these three sources in 1979 and 1980.

We are confused by the statement on Page ITA-22 of the revised justifications as it says that Commerce "facilitates private U.S. investment abroad."

Do you mean that Commerce promotes U.S. investment abroad?

No, Commerce does not promote American investment overseas. We do provide assistance to U.S. companies seeking guidance on foreign investment matters on a strictly reactive basis, because investment abroad contributes to the U.S. balance of payments and stimulates significant exports.

We are informed that the Invest in the U.S.A. office is budgeted for 3.5 work years and $144,000. This represents a severe curtailment of this office compared to the 7 professionals and a secretary that manned Invest in the U.S.A. in 1977. Why has this office been so sharply reduced and is the curtailment appropriate in view of our balance of payments situation?

The Invest in the U.S.A. staff has not been reduced. The latter figures in the question pertain to another Commerce organization, the Office of Foreign Investment in the United States, which monitors foreign investment transactions and trends. The functions of the two staffs are not related.

The General Accounting Office has found that our Embassies have generally assigned a low priority to helping states attract investment. Does the Foreign Commercial Service have any specific plans to improve the performance of our Embassies in attracting foreign investment into the United States?

The Foreign Commercial Service (FCS) has established as its top worldwide priority the assistance of the U.S. business community by responding actively to its trade promotion and investment needs. Within this priority, one of the specific detailed responsibilities of the FCS is to support trade and investment efforts organized by Federal, state and local governments and organizations. The actual level of FCS response and assistance to state investment needs is mainly determined by the extent of state government efforts to seek our assistance.

Some six months ago we observed evidence of growing commitment by state governments to staffing of trade and investment promotion offices abroad. As a result, the Director General of the FCS organized a meeting in Brussels, early this month, of representatives of state and local government offices in Europe. The meeting specifically discussed and encouraged ways of improving cooperation between the FCS and state government officials abroad. This meeting included senior FCS officers from all major European posts.

Some two months prior to that meeting, the Director General requested the U.S. Chamber of Commerce to undertake a study of state and local government trade and investment promotion efforts to identify the techniques they found to be most effective in promoting their interests overseas. The FCS will use the results of this study to hold discussions with representatives of state government development offices to improve our cooperative efforts.

Additionally, the FCS Cooperating Associations Group, on March 24, 1981, decided to invite participation by representatives of the Association of State Government Development Offices and the National Governors Conference. This FCS Group focuses on means of improving cooperation between industry and government in both trade and investment matters.

Beyond these measures taken to date, the FCS also plans, in the annual commercial program planning done by its posts abroad, to flag state and local government trade and investment activities as one of the program priorities to be considered in developing the posts' commercial action plans.

During the last Administration, a computerized Textile Information Management System was developed and is now operational through time sharing arrangements.

What is the status of the procurement of the computer for TIMS?

We have completed all the steps for procurement of the TIMS computer and are ready to sign the contract which is now awaiting final action by the Department's procurement staff.

Do the arrangements for Census operation of the TIMS computer adequately safeguard the priority of the Office of Textiles?

There is an understanding between the Office of Textiles and Apparel and the Foreign Trade Division of Census that ITA will have priority use of the TIMS computer. We do not foresee any problems in this area.

How will the reduction of 3 positions in 1981 from the 1980 level of 50 affect the Office of Textiles?

The reduction of three positions in the Office of Textiles and Apparel will not affect priority responsibilities of the Office.

In view of the critical importance of the Trigger Price Mechanism (TPM) for full enforcement of our trade laws with respect to steel, is the Deparartment of Commerce satisfied that its budgetary resources will permit adequate staffing for full and effective implementation of TPM?

Resources exist within the Department of Commerce which, with a minimal amount of additional hiring for specialized expertise, will provide for full and effective enforcement of our trade laws with respect to steel. The Department is confident that the optimum allocation of its resources ensures rigorous implementation of TPM.

Can you give us some idea of the number and nature (professional, clerical) of the positions involved that might have to remain unfilled because of budgetary constraints?

There will be no positions assigned to this program that will be left unfilled.

Does the staffing you have mentioned fully comprehend the positions needed to operate the TPM as strengthened when it was reinstated last October -- for example, with regard to the related party transaction, preclearance, and surge provisions?

Based on current workload indicators, we believe the staffing arrangements discussed above will meet the requirements of the reinstated TPM.

In view of the vital importance of the TPM to our steel industry for enforcement of our trade laws with respect to steel, are you satisfied that the International Trade Administration will be adequately staffed to administer TPM properly, including effective enforcement of the provisions on imports, surges, preclearances, related party transactions, etc.?

We expect the staffing arrangements described above will meet the needs of the TPM. Should an unexpectedly large number of anti-dumping or subsidy cases be filed with the Department or an unexpectedly large number of TPM violations require the Department to self-initiate a number of dumping or subsidy investigations, then increased resources would have to be assigned to the TPM.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

The personnel reductions in NOAA are a serious matter, since only a small number of them are directly related to actual budget cuts. The agency has had an increase of only 239 positions over its 10 year life--less than 2 percent--while other agencies, such as the Fish and Wildlife Service have had a three-fold increase in personnel over the last 10 years. NOAA is now slated for a cut of 6 percent, or 770 positions. The result is that NOAA will have fewer people than before it was formed 10 years ago. This means that basic services are being terminated, many of which predate the agency's creation.

NATIONAL WEATHER SERVICE

Just on the weather side alone we are creating serious problems. While I am not so concerned with the closing of the part-time weather stations--I have supported these efforts in the past--I am deeply concerned about the loss of eight Forecast Offices and the termination of Aviation Area Forecasts. The aviation weather is going to have a big impact on general aviation in this nation and will affect basic safety of lives. And the reduced Forecast Offices will have an effect on safety of lives and property as well. NOAA will no longer have the people to update warnings for severe weather, flash flooding, and the like in these eight areas.

The private sector cannot be expected to pick up the slack here, and given the impact of these cuts, why are you supporting them?

Program reductions were found to be possible at eight of NOAA's National Weather Service Forecast Offices's (WSFO's) without seriously impacting the provision of basic public forecast and warning services or services to particular users such as aviation or agriculture. State and regional forecast guidance will continue to be prepared at these eight offices and supplied to those Weather Service Offices (WSO's) that are within its area of responsibility. The aviation forecast program, and in some cases other specialized programs such as marine and agriculture for the state or regional area of responsibility, will be reassigned to an adjacent full-service WSFO. The staff of the WSFO that will assume additional forecast responsibilities will be augmented to provide a minimal staff necessary to accomplish their expanded tasks.

The Aviation Area Forecasts (FA's) issued at 12 WSFO's are used by pilot briefers as a pre-flight briefing tool. The FA's will be replaced by a generalized automated aviation area forecast prepared at a central location using new technological capabilities. This new product will be made available to pilot briefers and is expected to meet minimal requirements of identifying significant weather conditions that could impact flight route decisions. Aviation Route Forecasts for commercial airlines remain unchanged.

ABOLITION OF NOAA

The implication of the budget and personnel cuts we are seeing for this agency seems clear.

- *Are you supporting an effort to break down this agency and eventually abolish it, or break it up to be moved to other agencies?*

- Is this an effort to resurrect all the past, unsuccessful reorganization efforts and move the remains of a weakened agency to another Department?

This Administration is committed to a reduction in the level of Federal expeditures to secure a balanced budget and to thus stimulate American industry.

All Federal programs were subject to review and reductions; the NOAA programs were not exempted.

The Department's personnel ceilings were reduced 8.2% in 1982, or 2,487 positions. NOAA personnel ceilings were reduced 6% in 1982, or 770 positions. NOAA, therefore, was not intentionally singled out for budget reductions.

Primary NOAA functions, e.g., weather, oceans, climate services and research remain essentially intact. Lower priority programs were reduced. Thus, there is no intent on the part of this Administration to abolish, reorganize, or transfer to another Department, the functions of NOAA.

STATE COASTAL ZONE MANAGEMENT GRANTS

The proposed budget eliminates state grants for the Coastal Zone Management program, thus terminating that program for all intents and purposes. While the states are willing to take on the financial burden if given some time to phase down Federal funding and phase up state funding, this cut will not allow that.

This program controls permitting at the state level for coastal economic development, and has been a great success in cutting red tape associated with permitting, and thus accelerates development time. While none of the statutory permit requirements are being changed, we are eliminating the one program that has been a help with getting industry sited along our coasts with the result that we may very well see severe economic disruption on the coastlines of 25 states.

Is this what you intend?

Based upon a preliminary analysis, we expect that while the termination of Federal funding will result in certain administrative changes within the states, a minimum of 15 states will be able to continue some or all of their Coastal Zone Management (CZM) activities without Federal funding. While only five states are likely to continue a separate CZM function once Federal aid is discontinued, an additional ten states are estimated to be capable of continuing some of their established CZM activities, although not in the context of a separate CZM program. There is no assurance that a one or two-year extension would ensure CZM continuity beyond the 15 states now projected to continue CZM without Federal funds.

Because the states, industry, and other interest groups have benefitted from the operation of CZM, as the Senator suggests, we expect these beneficial aspects of the program will continue. We do not expect major economic dislocation to result from the termination of Federal funding.

LANDSAT

The elimination of funding for NOAA's satellite programs is another concern. Regarding Landsat, we will be at the mercy of the French and the Japanese within a relatively short period of time if we give up this technology development. It seems to me that the United States will have abandoned yet another area of technology and productivity to foreign economic rivals that the private sector could take over in five years; all for a short-term budget gain. Both our private and public sectors will end up dependent on these other countries for the necessary data since their governments are supporting similar remote sensing efforts.

Why does the Reagan Administration propose abandoning this technology to the French and the Japanese?

The Reagan Administration is not proposing that the U.S. abandon the Landsat technology to the French and Japanese.

NASA is proceeding to complete construction of Landsats D and D', and the associated ground system at the Goddard Space Flight Center, that will provide Landsat data through the mid-1980's.

NOAA is continuing its planning activities for operational management of the Landsat system, starting in early 1983 with respect to Multi-Spectral Scanner data and in early 1985 with respect to the Thematic Mapper data.

NASA is continuing to develop the advanced solid state sensor technology that will enable the United States to remain in the forefront of land remote sensing from space.

However, the FY 1982 budget request marks a shift in planning for private sector transfer. Instead of Federal guarantees of data continuity beyond Landsat D and D', additional follow-on and backup coverage, as well as any ground system upgrades, will depend on the private sector's willingness to invest in and operate an earth resources satellite system.

This approach is recommended because the planned Federal (NASA) investment in Landsat satellites is sufficient to permit evaluation of the operational uses of Landsat data and, if these uses are of potentially significant value, to attract a private sector owner-operator.

Questions Submitted by Senator Inouye

STATE AND LOCAL PLANNING EFFORTS

Doesn't the Reagan Administration support strong state and local economic development planning efforts and how does it expect these efforts to continue without Federal assistance?

The Administration does support strong state and local economic development planning and believes that where states and localities feel this is an important function they will provide the necessary resources. Enterprise zones and Community Development Block Grants will facilitate the transition.

ELIMINATION OF EDA

The President said eliminating EDA would get rid of a lot of professional grantsmen and middlemen. That's something we all can agree on, but do we have to eliminate an agency with a proven track record over the last 16 years in both Republican and Democratic Administrations. Instead of eliminating EDA, why not insist on single agency funding of projects to centralize accountability and eliminate the grantsmen and middlemen?

Decision making on what to do and how to do it is accomplished better at the state and local level rather than by a Federal agency. With the enterprise zone/Community Development Block Grants approach, responsibility and accountability will be focused at the local level.

BLOCK GRANTS

What can you tell us about the specifics of the Administration's proposed block grant alternative to EDA?

The Community Development Block Grant program (CDBG) of the Department of Housing and Urban Development would serve as the vehicle for delivering funding support to the states and localities. Community Development Block Grants funds will total $7.9 billion for FY 1981 and FY 1982, of which $1.4 billion will go to rural areas.

TARGETTING

Why do you regard it politically impossible "to target EDA more effectively;" all it takes is the ability to say "no" at the Department as there are no mandated expenditures?

It is extremely difficult to say "no" to an applicant on the basis of eligibility, when the Congress has specifically defined what that eligibility is.

BLOCK GRANTS AND ENTERPRISE ZONES

We have only 6 months left before fiscal year 1982 begins, and it appears highly unlikely that the block grants will be authorized by October 1. Should not a highly targetted and reduced EDA be maintained until we are sure there will be block grants and enterprise zones for economic development.

It is essential that immediate action be taken in order to counteract the current inflationary psychology. Block Grant authority to support new program approaches now exists (CDBG), and we are working toward getting an enterprise zone program in place as soon as possible.

PATENT AND TRADEMARK OFFICE

FUNDING LEVEL

Over the last several years the business community has been deeply concerned with conditions at the Patent and Trademark Office. The Subcommittee joined in those concerned and sought to bolster the Examiner Corps, as well as update the office equipment. Unfortunately, the previous Administration and the other body resisted our efforts. Finally, the Carter Administration proposed 60 additional positions each for patent and trademark processing for fiscal 1982, but the Reagan revisions have withdrawn all the additional positions except for 30 for trademark processing.

Your statement indicates your dissatisfaction with conditions at the Patent and Trademark Office, but do you think the American business community will be satisfied with just getting up to the levels funded for this year?

I believe that the Patent and Trademark Office budget for Fiscal Year 1982 is a strong one under the existing circumstances. The minimal reductions in the Patent and Trademark Office's FY 1981 budget will not adversely affect its programs. No rescissions of PTO funds for FY 1981 have been proposed.

I am committed to modernizing the Patent and Trademark Office and to reducing the time it takes to obtain a valid patent and to register a trademark. My goal is to achieve an 18-month average patent application pendency level and a 12-month average trademark application pendency level.

The very necessary recent Government-wide hiring freeze has prevented the Patent and Trademark Office from hiring the full staff for which it has been budgeted, including most of the planned 167 new patent examiner hires. As a consequence many of these planned hires will have to take place in FY 1982 rather than FY 1981, leaving little capacity for absorbing more examiners in FY 1982.

The increase in FY 1982 for the trademark operation is sufficient to begin reducing trademark pendency. In addition, the FY 1981 and 1982 budgets provide for additional automation of the Patent and Trademark Office operations, which will improve management and efficiency.

Achievement of President Reagan's economic goals through budget reductions is critical and requires some sacrifices. The budget for the Patent and Trademark Office involves an extremely small share of the sacrifices required.

PATENT PENDENCY AND INDEPENDENT AGENCY

Patent Pendency is expected to be 24.4 months as compared to 19.4 months in Fiscal 1979 when we already concluded it was too long. As you indicate, even with the infusion of personnel up to the current authorization level, all we will be doing is slowing the growth in patent pendency. Last year there was a move to make the PTO an independent agency which was successfully resisted by Secretary Klutznick. Do you agree that by doing nothing to reduce patent pendency it appears that the Department wants the PTO taken away from it?

I am fully committed to reduced pendency and to the issuance of valid patents and trademark registrations. Making the Patent and Trademark Office an independent agency is a serious step, one that would result in some increased costs. I feel that independent agency status for the Patent and Trademark Office would be inappropriate. We are reviewing the general organization of the science and technology branch of the Department, which includes the PTO, to determine if we can more efficiently manage the programs in this area.

General Administration

STATEMENT OF CLIFFORD J. PARKER, ACTING ASSISTANT SECRETARY FOR ADMINISTRATION

ACCOMPANIED BY:
NANCY A. RICHARDS, DIRECTOR, OFFICE OF BUDGET
JAMES K. BLUBAUGH, DIRECTOR, OFFICE OF BUDGET OPERATIONS

BUDGET REQUEST

Senator Weicker. Our next request is that of the general administration. The amount requested is $35,722,000, an increase of $700,000 over the 1982 base. It provides for 617 positions. Appearing on behalf of this request is Clifford Parker, Acting Assistant Secretary for Administration who is accompanied by Nancy Richards, Director, Office of Budget, and Mr. James Blubaugh, Director, Office of Budget Operations. We will be pleased to hear your statement.

Mr. Parker. Thank you, Mr. Chairman, members of the subcommittee.

I am pleased to be here today to present the budget requests for the general administration of the Department of Commerce.

In 1981, we are asking for a supplemental increase of $1,169,000 over the $32,925,000 currently appropriated. The increase represents this year's costs for the October 1980 pay raise. It is important to note here that in 1981 general administration will save $832,000 through program reductions and fiscal constraints; this entire amount has been applied against our pending pay supplemental.

The total request in 1982 is $35,722,000, an increase of $2,797,000 over the current appropriation. However, net transfers, pay raises, and uncontrollable increases will cost $4,065,000 in 1982. Setting these aside, the request is actually $1,268,000 less than the 1981 level. The 1982 budget before you now is 65 positions below the 1982 base requested in the January budget submission, a decrease of 10 percent.

1982 BUDGET INCREASES

I would like to highlight the major items of change in the 1982 budget.

As I mentioned, included in the request is $4,065,000 for adjustments to base——

OCTOBER 1980 PAY RAISE

The largest of these is $2 million for the annualized cost of the general schedule pay raise. We are planning to absorb $832,000 in 1981, or 42 percent.

OTHER UNCONTROLLABLE INCREASES

The General Services Administration has increased its space rental charges—which are commonly referred to as the SLUC payments—by

$1,499,000. Increases due to other rate changes, such as the Federal telecommunications system and the employees compensation fund, will cost us $505,000.

TRANSFERS

A net increase of $172,000 results from transfers to and from the appropriation.

We are requesting only one program increase in 1982, an additional $1 million for the Secretary's special initiatives fund. The administration is concerned with the declining productivity experienced over the last few years. Commerce is engaged in a number of functions directly or indirectly related to productivity and technology. These functions require coordination and leadership from the Secretary, and this small amount will be required to support a few cross-cutting activities.

1982 BUDGET REDUCTIONS

The increases in the budget are offset to a significant degree by the decreases we are proposing——

OVERALL DECREASES

Reductions in travel, consulting services, and equipment purchases have been applied throughout the appropriation and will save $157,000.

1981 PROGRAM DECREASES

Annualization of the program reductions we proposed in 1981 will produce a 1982 savings of $1,811,000. These savings are derived from elimination of the regional secretarial representatives function, $1,070,000; elimination of the Office of Program Coordination, $75,000; reduction in the size of the policy staff, $141,000; phase-out of support functions related to the Economic Development Administration, $360,000; and reduction in the number of temporary employees, $165,000.

1982 PROGRAM DECREASES

A reduction of $300,000 in the amount provided for Senior Executive Service performance awards and executive development is proposed. Under current guidelines, bonuses are payable to a lower percentage of career SES members than was originally estimated; in addition, the average size of these bonuses has been reduced.

DEFERRAL

As a final note, I would like to point out a planned deferral of $3,050,775 related to the funds provided for the 1982 Knoxville energy exposition. This amount reflects the costs in 1982 and 1983 for the exhibits and operation of the U.S. pavilion, and it is consistent with our original plans for the money. The money was initially appropriated in the 1980 supplemental, and was intended to cover all construction and operating costs through 1984.

Thank you, Mr. Chairman.

KNOXVILLE ENERGY EXPO 1982

Senator WEICKER. One of my least favorite projects over the past few years is the one you just mentioned, the International Energy Exposition to be held in Knoxville in 1982. The Federal Government's cost is $44.4 million—$21.3 million for design, construction, and operation of the U.S. pavilion and $23.1 million in grants and other assistance.

In the fiscal year 1980 supplemental appropriation, Public Law 96–304, Congress provided $20.8 million for the design, construction, and operation of the Federal pavilion, and specifically stated: "* * * no additional Federal funds shall be made available for this purpose." Mr. Secretary, that, for all intents and purposes, is a pay cap on the pavilion project. A recent GAO report released last Friday stipulates that along with the U.S. pavilion appropriation of $20.8 million there are also assigned preliminary pavilion design costs of $516,472, bringing the total amount to be spent to $21,316,472.

Why did the Department of Commerce not make disclosure to the committee of the total costs associated with the U.S. pavilion?

Mr. PARKER. I believe we have done so. The $516,472 was used for the very preliminary stages, for the initial design work. As you know, the Department has a small staff of four individuals whose function is to work with communities who are interested in international expositions. They do not have the technical staff—architects, design engineers, exhibit specialists, et cetera—nor the funds to do the basic work that is required before you can prepare a proposal. The $516,472 was used in that connection, to develop the preliminary proposal. That would have occurred before the funds were appropriated.

Senator WEICKER. GAO estimates that money spent prior to receiving the Federal appropriation of $20.8 million was not included in the total for the pavilion. These include: $89,000—consulting services and advice to Department of Commerce prior to request being made; $30,000 to $50,000—contracts for environmental assessments; $25,000—$5,000 to each contractor for design competition; $120,000 to $150,000—cost of Expo staff—six employees—prior to appropriation being made; $159,000—redesign costs once determination was made that OMB would only support $20.8 million versus $25 million that was requested; $516,472—total: "preliminary pavilion design costs."

Mr. BLUBAUGH. Mr. Chairman, the Department of Commerce did request a supplemental for these funds. It was denied by Congress, but we were given authority by the Congress to go ahead and expend these initial moneys from our existing balances. It was a 1979 supplemental.

RESIDUAL USE OF U.S. PAVILION

Senator WEICKER. There has been much talk about the residual use of the pavilion either with the University of Tennessee or Oak Ridge as an energy research laboratory, yet there is still no Federal reuse plan. There is reason to believe that the conversion costs may be too high and no one will want it. GAO has concluded, "In the absence of a firm Federal reuse plan, construction of a permanent type pavilion as Expo 1982 is not justified." GAO concludes the Commerce's decision to continue building a more costly permanent facility was not a prudent use of Federal funds.

Since Commerce was notified by GAO about this as early as 1976, why did the Department not proceed with an alternative temporary and less costly structure?

Mr. PARKER. My understanding is that we had involved GSA and various other interested parties in the design for this. I am not certain we had GAO involved at that point in time. But at that time this was a prudent course of action. I am aware, Mr. Chairman, that there remains concern. Discussions on it are now underway within the Department and with GSA on the question of residual use.

[The information follows:]

RESIDUAL USE OF THE KNOXVILLE PAVILION

The GAO report on residual use of the Knoxville pavilion was released on March 20, 1981. In that report, the Comptroller General alleged that the Department of Commerce and GSA had not provided a sufficient plan for the residual use of the Knoxville pavilion. The Department has a period of 60 days to respond to the GAO report; the Department will respond. In the interim, there will be meetings among the Expo staff, GSA, and general counsel.

NEED FOR PERMANENT PAVILION

Senator WEICKER. If there is that concern why proceed with a permanent facility?

Mr. PARKER. At this point in time it is my understanding that construction is underway. I have not seen that picture. Obviously it is underway.

[A picture of the site is shown by Senator Weicker, dated March 1, 1981.]

Senator WEICKER. Not very much.

Mr. PARKER. I believe our Inspector General and the other people concerned with this project within the Department were out to visit it. My understanding from them is that we must proceed with the permanent structure. Frankly, it is my understanding that there would be no way possible to move ahead within schedule and try to put in a temporary structure at this point in time. I believe they are also still optimistic on not only the success of the exposition but working out some plans for reuse of the facility.

Senator WEICKER. If no other Federal use can be found for the building how much would it cost to convert the pavilion to a Federal office building?

Mr. PARKER. I would have to provide that for the record, Mr. Chairman. That is one of the things we are exploring with GSA. Personally I am not even certain how feasible conversion to an office building would be. It is one of the things we are looking into. I believe early on it was hoped that the University of Tennessee would pick it up for a research lab. I am not so certain now that the University of Tennessee foresees the need or desires to get it for that purpose. That is the issue that we have under consideration.

[The information follows:]

CONVERSION COSTS OF THE KNOXVILLE PAVILION

Converting the pavilion as is into office space would yield approximately 45,000 square feet of space at an estimated cost of $2 million.

In addition, converting the present open space into office space would provide an additional 55,000 square feet of space at an estimated cost of $5 million.

USE OF FACILITY AFTER EXPO

Senator WEICKER. GSA says the cost would be somewhere between $6 and $8 million?

Mr. PARKER. That could well be correct.

Senator WEICKER. You have no assurances from the University of Tennessee that they will take over the facility after the Expo?

Mr. PARKER. I do not have any assurances. I have not been the director on this project.

Senator WEICKER. That I understand.

To synopsize here, the decision is still final as to temporary or permanent; in other words, you are going to proceed permanent? There is no possibility this can be made into a temporary facility?

Mr. PARKER. That is my understanding, Mr. Chairman.

Mr. BLUBAUGH. I think the picture you are referencing was taken on March 1. Since that time some of the foundation work has been started. One of the real problems converting from a temporary to permanent structure at this time would be redrawing the architectural plans from scratch, recompeting the contract, things of that nature. With the limited time we have between now and the opening, I do not think it would be possible.

Mr. PARKER. I just had a note sent to me, Mr. Chairman. Apparently there is some positive indication that the University of Tennessee does want the facility. We will have to verify that.

[The information follows:]

RETENTION OF THE KNOXVILLE PAVILION BY THE UNIVERSITY OF TENNESSEE

The University of Tennessee has notified the Department of its interest (March 25, 1981) in the residual use of the structure and of its plans to pursue this with appropriate Federal officials and with their own Board of Trustees.

Also, the State of Tennessee and the city of Knoxville have orally communicated an interest in the pavilion, should the negotiations with the university be successful.

FRAUD, WASTE, AND ABUSE

Senator WEICKER. I just want to point out that the record has been clear on this project as far as this committee is concerned from the outset. I think it was, I think it is, and I think it will be a classic example of what the Reagan administration likes to refer to as fraud, waste, and abuse of the taxpayers' money. Most importantly, as far as this committee is concerned, from the time of its presentation, considerably low figure as to what it eventually is going to cost taxpayers, and we are nowhere near in that ball park as it was originally presented to this committee. And if anybody thinks that these little exercises in political clout do not cost money, before this is through, what will this little exercise in political clout cost? I suspect what, $30 million? Would that be about right. Already $44,352,000 is into it. I might add this cuts across all party lines. I am sure Senator Sasser had the support of

President Carter on the subject, I am sure the majority leader is very anxious to see the matter concluded. It is not a Republican or Democratic matter. It is a $44 million matter. That means I suspect that well covers everybody's taxes in this room, and maybe a few outside of it. It will make you feel good.

Mr. PARKER. We appreciate your concern in this area, Mr. Chairman. New people have come into this administration and it is one of the items we briefed them on very early. We had the Inspector General out and working with them.

Senator WEICKER. My comments are not meant to reflect on you.

1981 PAY SUPPLEMENTAL

What amount of the pay increase is absorbed by the Department and not requested in the supplemental? Is that absorption rate fairly constant throughout the Department or do one or two agencies have more increase than the others?

Mr. PARKER. It varied throughout the Department. The amount we are absorbing is 42 percent. I believe the Department is absorbing something close to 60 percent as a total.

[The information follows:]

$45,111,000 or 57.8 percent of the 1981 pay raise requirements of $78,509,000 was absorbed by the Department

The absorption rate varied widely throughout the Department as the implementation of the administration's economic recovery program impacted differently on the personnel requirements of the individual bureaus. The following table shows the total cost by appropriation, the amount absorbed, and the percent:

1981 PAY RAISE REQUIREMENTS

Bureau/appropriation	Total 1981 requirements	Amount absorbed	Percent
General Administration:			
Salaries and expenses	$2,001,000	$832,000	41.6
Bureau of the Census:			
Salaries and expenses	3,568,000	939,000	26.3
Periodic censuses and programs	11,701,000	4,496,000	38.4
Economical and Statistical Analysis:			
Salaries and expenses	1,559,000	662,000	42.5
Economic Development Administration:			
Salaries and expenses	3,000,000	3,000,000	100.0
Regional development program:			
Regional development programs	143,000	143,000	100.0
International Trade Administration:			
Operations and administration	6,028,000	4,298,000	71.3
Minority Business Development Agency:			
Minority business development	922,000	673,000	73.0
U.S. Travel Service:			
Salaries and expenses	118,000	118,000	100.0
National Oceanic and Atmospheric Administration:			
Operations, research, and facilities	34,440,000	19,224,000	55.8
Coastal zone management	200,000	23,000	11.5
Patent and Trademark Office:			
Salaries and expenses	5,882,000	2,220,000	37.7

1981 PAY RAISE REQUIREMENTS—Continued

Bureau/appropriation	Total 1981 requirements	Amount absorbed	Percent
Science and Technical Research:			
Scientific and technical research and services:	$5,194,000	$5,194,000	100.0
National Telecommunications and Information Administration:			
Salaries and expenses	878,000	878,000	100.0
Maritime Administration:			
Operations and training	2,875,000	2,411,000	83.7
Total, Department of Commerce	78,509,000	45,111,000	57.8

TRANSFER OF TERRORISM AND URBAN RETENTION PROGRAM

Senator WEICKER. You are transferring two positions and $126,000 involved in the terrorism and urban retention program to the Office of the Associate Deputy Secretary. This function was recently transferred from the ITA to the Bureau of Industrial Economics. What exactly is the function being transferred and why exactly is the function being transferred? Again, I want to know exactly what is involved in this program.

Mr. PARKER. Mr. Chairman, with respect to the latter point, exactly what is involved, could I provide that for the record? I am not that familiar with exactly what they are doing.

Senator WEICKER. Does anybody know?

Mr. PARKER. The purpose of the reorganization is to aline the new people coming in with the existing functions to which they are most closely tied. I understand this is most closely tied in with the international area. It is a very small operation; two people. I would like to ask Mr. Pratt, the Acting Associate Deputy Secretary, to speak on this point.

Mr. PRATT. Mr. Chairman, this project was originally part of the business liaison—or ombudsman—function transferred to the Associate Deputy Secretary in the previous administration. In the reorganization it is being moved back to ITA for ITA to evaluate with a view toward whether to abolish the function.

Senator WEICKER. Is this terrorism as I understand terrorism?

Mr. PRATT. That is correct.

Senator WEICKER. Terrorism is terrorism. The reason why I asked the question is, correct me if I am wrong, but didn't the administration reduce its request insofar as the FBI is concerned on terrorism?

It seems to me that is the place where terrorisn ought to be handled. I don't understand why it is in the Department of Commerce.

Mr. PRATT. It is being moved to ITA; we are asking that they evaluate its utility for American industry in the Department of Commerce with a view toward finding out why it should not be abolished.

Senator WEICKER. He is making an evaluation as to whether something should be abolished.

Mr. PRATT. This is a rare exception, I guess.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I have further questions for the record, Mr. Parker. I will submit those to you for response for the record.

Thank you very much.

Mr. PARKER. Thank you very much, Mr. Chairman.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

SAVINGS CONTINGENT UPON ENACTMENT OF LEGISLATION

What specific savings in the Department's request for FY 1981 and 1982 are contingent upon the enactment of legislation?

The Administration is proposing legislation to permit the Secretary flexibility to use Saltonstall/Kennedy funds for fisheries programs and to subject the use of these funds to the appropriations review process. All other savings being proposed may be implemented without the enactment of legislation.

Has legislation been submitted to Congress?

The legislation has been submitted to the OMB. However, the proposed appropriation language for 1981 and for 1982 would transfer excess funds from the Saltonstall/Kennedy account to the Operations, research, and facilities account.

When will it be submitted?

The legislation has been drafted in the Department. It will be submitted after it has been cleared by the Office of Management and Budget.

Can you tell us what actions other than legislation -- including reprogrammings, reorganizations, or delegations -- must be taken to meet the objectives of the budget for the Department?

It is clear that many funds will have to be reprogrammed in 1981. The cumulative effect of payraise absorptions, reductions in travel, equipment, and consultants, and program reductions and eliminations are reflected in the budget justifications. Specific reprogramming notices have not been transmitted to the Congress because a) all of the reprogrammings are the result of the same decision - to reduce spending, and b) the quantity and complexity of the reprogrammings are overwhelming. The necessary reprogramming notices are being prepared.

No decisions have been made on reorganizations or delegations at this time. We are giving detailed consideration to various alternatives and we will make prior notification to the Appropriations Committees before taking any actions.

I notice that although the Departmental budget is being reduced by one third, the overall support staff is being left essentially the same (617 in FY '82 us. 622 in FY '81). Could you explain this apparent inconsistency?

The General Administration account reflects reductions in 1982 which are greater than the Departmental average. The 1982 request of 617 positions is 65 positions and ten percent below the original 1982 base as submitted in the January budget.

How many positions are original to each of the functions in General Administration?

The following table tracks the orginal 1981 positions through the 1982 request:

	Executive Direction	Departmental Staff Services	Inspector General	Total
FY 1981 Currently Available (January Submission).....	91	348	203	642
1981 Program Reductions[a/]...	...	-53	-12	-65
Subtotal.....	91	295	191	577
1981 Transfers.....	-10	50	...	40
1982 Total Request.....	81	345	191	617

a/ Program reductions as follows: Secretarial Field Representatives(-30); Program Coordination(-4); Policy Staff(-10); and EDA-related Staff Support(-21).

What is the organizational breakout of the positions within:

A) Staff Services

B) Office of the Secretary and Assistant Secretaries

	Positions
Staff Services:	
General Counsel	74
Congressional Affairs	11
Public Affairs	17
Policy Development	89
Appeals Board	2
Regional Affairs	21
Deputy A/S for Operations	2
Administrative Services	6
Internal Security	20
Publications	6
Deputy A/S for Resources Management	2
Budget	20
Civil Rights	12
Financial Management	4
Organization and Management Systems	17
Personnel	21
Program Evaluation	8
Deputy A/S for Acquisitions, Grants and Information Management	2
Acquisitions and Grants	3
Information Management	8
Sub-Total	345
Inspector General	191
Sub-Total	536
Office of the Secretary and A/Secretaries:	
Secretary	18
Deputy Secretary	6
Executive Secretariat	8
Under Secretary for Trade	7
Deputy Under Secretary for Trade	4
Chief Economist	3
A/S for Administration	4
A/S for EDA	3
A/S for International Economic Policy	3
A/S for Maritime Affairs	3
A/S for Policy	6
A/S for Productivity, Technology & Innovation	4
A/S for Telecommunication & Information	3
A/S for Tourism	3
A/S for Trade Administration	3
A/S for Trade Development	3
Sub-Total	81
Grand Total	617

Your Special Initiatives Fund is being doubled in FY 1982 ($1 million to $2 million). Last year the fund undertook such initiatives as:

$200,000 for a computer package to display color patterns on U.S. maps;
$160,000 for assisting the People's Republic of China in setting up a patent system;
$300,000 to support the now defunct Council on Wage and Price Stability.

Given the overall reductions being undertaken throughout the Federal Government, is this the type of activity that merits doubling?

The Secretary's Special Initiatives Fund was established by Congress in 1979 to provide flexibility to the Secretary in financing unforeseen needs of the Department. This activity serves as a programmatic reserve and can only be used for initiatives personally approved by the Secretary. The use of these funds are strictly regulated; they must relate to matters affecting more than one Commerce agency, and they must be personnally initiated by the Secretary or other high ranking Administration policy officials. Due to the change in Administrations, the Department has not yet established any projects for FY 1981. Any funds not used at the end of the year will be returned to the Treasury.

The Special Initiatives Fund is the only source of financing which is available to the Secretary for emergency or unforeseen events, experimental projects, special studies, and the like. Of the three projects mentioned:

-- the first was for the Domestic Information Display System, which was jointly developed by NASA, Commerce, and other Federal agencies. With this system, any type of information can be visually displayed regionally, county by county, in such a manner as to quickly reveal trends and problem areas. The project reflects a long-standing Commerce goal of improving dissemination of critical data to the public.
-- the second was a joint project with the United Nations to provide technical expertise to the People's Republic of China, which was interested in establishing a patent system based upon the U.S. model. The Department of Commerce encourages programs such as this which will facilitate the development of trade relationships with the PRC.
-- the last provided funding for the Council on Wage and Price Stability. During the Carter Administration, this organization served as lead agency for the control of inflation. The Department of Commerce was a member of the Council.

What specific projects do you intend to fund?

The additional $1,000,000 will support productivity and technology enhancing efforts throughout the Department. Departmental activities in productivity are so pervasive that they require coordination and leadership from the Office of the Secretary. Under top-level supervision, these funds will be used to support the crosscutting of temporary programs and analytical experiences.

In the Budget in Brief (page 54) you include the elimination of 30 positions for Secretarial Representatives. However, there is no reduction of this magnitude in the total positions carried under the General Administration account. What happened to this 30 position reduction?

As illustrated in an earlier answer, the Salaries and expenses appropriation was reduced by 65 positions, 30 of which are associated with the Secretarial Representatives function. Since the 1981 appropriation has already been enacted, all savings which accrue during 1981 have been applied against the pay supplemental, where we are absorbing $832,000 or forty-two percent.

What will replace the Secretarial Representatives program, if anything?

The reorganization of the Department of Commerce will strengthen the Department's abilities to participate in the formulation and implementation of Federal economic policies. Integration of policy into the operational level will permit an expanded liaison with the business community and with the state and local governments. The Sec Rep function itself will therefore be absorbed at least in part by a redefinition and streamlining of the Associate Deputy Secretary's office. The ADS's office, once restructured, will include business liaison, governmental coordination, small and disadvantged business utilization and consumer affairs. The main business contact point will still be assumed by the International Trade Administration's 47 District Offices because the District Offices are accomplished liaisons and information resources for the Department.

TERRORISM AND URBAN RETENTION

You are transferring two positions and $126,000 involved in Terrorism and Urban Retention program to the Office of the Associat Deputy Secretary. This function was recently transferred from the International Trade Administration to the Bureau of Industrial Economics. Why exactly is the function being transferred again? What exactly is involved in this program?

As you know, The Secretary notified you on March 24, 1981 of his intention to reorganize the Office of the Associate Deputy Secretary (ADS), along with other Office of the Secretary reorganizations.

The terrorism program is being focused on aids to U.S. businessmen in the export market to assess the impact of terrorism activities on their travel and marketing plans. Therefore, we are placing the terrorism program in the International Trade Administration. The two terrorism positions are included in the 13 positions shown as a Trade Development increase.

Questions Submitted by Senators Weicker and Bumpers

KNOXVILLE EXPOSITION

What were the total amount of savings recommended by the former Inspector General (Mary Bass) who was fired by the new Administration?

At no time did the former Inspector General (Mary Bass) conduct a formal audit or investigation that resulted in cost-saving recommendations.

What is the Department doing to implement the recommendations of the Inspector General?

Shortly after taking office, Secretary Baldrige directed a review of the Knoxville Exposition plans and progress. At his request, a representative from the Inspector General's office participated in this review. This preliminary survey identified the need for several management improvements and actions in support of the exposition. The Department has taken steps to address the deficiencies, the most important example being the culmination of a memorandum of understanding between the Commissioner General/Department of Commerce and Knoxville International Energy Exposition, Inc., the exposition organizers. This agreement formalized the delineation of responsibilities and duties of each party.

Questions Submitted by Senator Inouye

CONSULTANTS APPOINTED SINCE JANUARY 20, 1981

Do you have a list of all consultants appointed since January 20, 1981, indicating their salary and duties and earnings to date?

Name	Appointment Date	Salary	Total Earnings	Duties
General Administration:				
Fine, Stanley S.	1-21-81 (resigned 1-30-81)	$171.36 p.d.	$1,370.88	Expert, ED-301: Performs and coordinates special studies for the Acting Assistant Secretary for Administration. Develops working papers with recommendations for the effective use of resources.
Morris, William H. Jr.	1-21-81 (Appointed as Special Advisor to the AS for Trade Development, ES-6 in ITA, 03-20-81)	$171.36	$7,197.12	Expert, ED-301: Conducts special studies for the Acting Assistant Secretary for Administration to develop planning papers for the most effective use of resources during the transition.
Triplett, Arlene	2-17-81 (Appointed as Special Advisor to the AS for Administration. ES-301-6 in OS 03-22-81)	$192.72	$4,625.28	Expert, ED-301: Conducts special analyses and makes recommendations to the Acting Assistant Secretary for Administration on the development of new or revised programs.

Name	Appointment Date	Salary	Total Earnings	Duties
International Trade Administration:				
Earnshaw, Donald	2-8-81	$193/ day	$6,562	DAS, Export Development.
Charnock, Ronald	3-11-81	$193/ day	$2,316	30-day appointment to evaluate WITS.
Glimpse, Wareen	3-11-81	$193/ day	$2,316	30-day appointment to evaluate WITS.

EXTENDED TRAINING OF EMPLOYEES

The Department currently has some 18 persons involved with its Science and Technology Fellowship program which takes them away from their regular jobs for an extended period.

How many employees were in fulltime training activities as of March 1, 1980?

As of March 1, 1980, there were 19 Commerce Science and Technology (COMSCI) fellows and 54 employees (listed below) in other extended training programs:

1980 Long Term Training Assignments

Name, Title, Grade	Agency	Program
Russell I. Byington Economist, GS-12/04	MARAD	Catholic University Fellowship Program
James Robert Hawkins Supervisory Computer Specialist, GS-14/07	MARAD	University of Maryland Fellowship Program
Betty J. Taylor Economist, GS-11/04	MARAD	University of the District of Columbia Fellowship Program
Myra R. Wells Personnel Officer, GS-15/05	MARAD	American University Key Executive Program
Armando Alarcon Electronics Engineer, GS-5	NOAA	Oceanographic Data Systems

Name, Title, Grade	Agency	Program
Tommie W. Alexander Computer Sciences. GS-11	NOAA	Oceanographic Data Systems
Steven A. Amburn Meteorologist, GS-12	NOAA	Computer Science
Esther L. Atkins Mathematician, GS-7	NOAA	NOAA's Upward Mobility Training Program
Timothy J. Barnes Aerospace Engineer, GS-11	NOAA	Systems Engineering
Thomas E. Berman Meteorologist, Intern Graduate, GS-11	NOAA	Computer Science Meteorology
Jack L. Brown Electronic Technician, GS-11	NOAA	Engineering
Shirley A. Brown Mathematician, GS-7	NOAA	NOAA's Upward Mobility Training Program
Pablo Clemente-Colon Physicist, GS-7 (Grad Scientist)	NOAA	NOAA's Upward Mobility Training Program
Robert L. Dixon Biological Technician, GS-5	NOAA	Fish Biology
Susan A. Elmore Electronics Technician, GS-5	NOAA	Electronics
Early III Funderburk Mathematician, GS-7	NOAA	NOAA's Upward Mobility Training Program
Irish Green Mathematician, GS-5	NOAA	NOAA's Upward Mobility Training Program
Sylvia Green Mathematician, GS-5	NOAA	NOAA's Upward Mobility Training Program
Weldon T. Hill Mathematician, GS-7	NOAA	NOAA's Upward Mobility Training Program
James S. Holland Physicist, GS-5	NOAA	NOAA's Upward Mobility Training Program
John F. Isner Geodesist, GS-13	NOAA	Computer Science Geodesist

Name, Title, Grade	Agency	Program
Joseph E. Johnson Mathematician, GS-5	NOAA	NOAA's Upward Mobility Training Program
Edward C. Johnston Meteorologist, GS-12	NOAA	Meteorology/Graduate Meteorology Program
Mary F. King Physical Science Technician, GS-5	NOAA	Electronics
Richard W. Knight Meteorologist, GS-12	NOAA	Statistics
William M. Maynard Cartographer, GS-9	NOAA	Mathematics
Reginald D. Neal Gen. Biologist, GS-5 (Grad Scientist)	NOAA	NOAA's Upward Mobility Training Program
Richard C. Patchen Oceanographer, GS-12	NOAA	Hydrodynamics
Joseph A. Pilkington Physical Science Technician, GS-11	NOAA	Electrical/Aerospace Engineering
Benjamin W. Remondi Supv. Physical Scientist, GS-14	NOAA	Astrodynamics
Patricia Rhone Physical Scientist, GS-7	NOAA	NOAA's Upward Mobility Training Program
Alan C. Ringo Hydrologic Technician, GS-9	NOAA	Hydrology
Noreen M. Roberts Physical Scientist, GS-7	NOAA	NOAA's Upward Mobility Training Program
Robert S. Robinson Meteorologist, GS-11	NOAA	Meteorology
Richard C. Savage Electronics Technician, GS-9	NOAA	Electrical Engineering Technology
Curtis A. Smalls Mathematician, GS-5	NOAA	NOAA's Upward Mobility Training Program
David T. Smith Supv. Hydrologist, GS-14	NOAA	Hydrology

Name, Title, Grade	Agency	Program
Denair R. Thomas Mathematician, GS-7	NOAA	NOAA's Upward Mobility Training Program
Suzanne Treppa Personnel Clerk, GS-5	NOAA	Personnel Management
Charles M. Turner Prop. & Sup. Spec., GS-12	NOAA	Business Administration
Steven V. Vasiloff Physicist, GS-7	NOAA	NOAA's Upward Mobility Training Program
Ronald A. Warren Architect, GS-11	NOAA	Architectural
Marcia Weaks Meteorologist, GS-7 (Grad Scientist)	NOAA	NOAA's Upward Mobility Training Program
Lita Weislow Logistics Mgmt Spec., GS-9 (Grad Scientist)	NOAA	NOAA's Upward Mobility Training Program
Gary R. Whitsell Electronics Technician, GS-11	NOAA	Engineering
Glenda K. Williams Chemist, GS-7	NOAA	NOAA's Upward Mobility Training Program
Jerome Williamson Physical Scientist, GS-7	NOAA	NOAA's Upward Mobility Training Program
Bonnie I. Wyatt Physicist, GS-7	NOAA	NOAA's Upward Mobility Training Program
David B. Zilkoski Geodesist, GS-11	NOAA	Geodetic Science
Wilbur Paul Program Officer, GS-14/5	EDA	Social Policy
Joseph C. Aubele Program Coordinator, GS-14	NBS	Education for Public Management Program
Arthur H. Fanney Mechanical Engineer, GS-12	NBS	Mechanical Engineer
Dennis M. Stogsdill Administative Office, GS-13	NBS	Education for Public Management Program
George E. Turner Research Architect, GS-13	NBS	Environmental design technology

By program and person, including agency, title, and salary, please provide a listing of all Departmental employees on fulltime training programs, as of March 1, 1981.

A list of the 1980-1981 Commerce Science and Technology Fellows and other employees in extended training programs as of March 1, 1981 follows:

Name	Agency	Title	Grade
David H. Attaway	NOAA	Assoc. Prog. Director, Div. of Living Resources Office of Sea Grant	GS-15
Benjamin Buchbinder	NBS	Supervisory Statistician	GS-15
Frederick Burton	Dept. of Justice	Digital Computer Systems Administrator	GS-15
Dr. Melvyn Ciment	NBS	Senior Applied Mathematician	GS-14
Richard F. Dunlavey	NBS	Program Analyst	GS-14
Dr. Andrew Fowell	NBS	Chief, Product Performance Engineering Division	
Lawrence Fritz	NOAA	Physical Scientist	GS-14
Robert Grant	DOC	Senior Policy Analyst, Office of Environmental Affairs	GS-15
Mark Haflich	DOC	Attorney, Office of the Assistant General Council Legislation	GS-15
Francis Husar	PTO	Supervisory Patent Examiner	GS-15
Raymond Jones	PTO	Supervisory Patent Examiner	GS-15
Rozanne Oliver	ITA	Economist	GS-13
Thomas Oliveri	ITA	Director Policy Planning Division	GS-15
Norman Paul	O/S	Computer Specialist	GS-14
Bruce Reynolds	PTO	Supervisory Patent Examiner	GS-15
Dr. Marilyn Sieber	ITA	Financial Economist	GS-13

Name	Agency	Title	Grade
Dr. Emil Simiu	NBS	Research Structural	GS-14
John Smith	NBS	Metallurgist	GS-14
John Will	PTO	Supervisory Patent Classifier	GS-15
William S. West	Consumer Product Safety Comm.	Deputy Director, Engineering Sciences	GS-15
Louis J. Murphy	ITA	Director, General Commercial Policy Division	GS-15
Kathleen D. Burroughs	MARAD	Transportation Industry Analyst	GS-13
Michael E. Myrtle	MARAD	Management Analyst	GS-14
Paul D. Domich	NBS	Mathematician	GS-7
Richard E. Harris	NBS	Physicist	GS-13
Richard H. Jackson	NBS	Mathematician	GS-14
Robert B. Marshall	NBS	Management Analyst	GS-12
Michael E. McCabe	NBS	Mechanical Engineer	GS-14
Andrew N. Bodner	NOAA CORPS	LCDR, Public Administration	
William J. Lounsbery	NOAA CORPS	LCDR, Marine Policy/Resources Management	
Martin R. Mulhern	NOAA CORPS	LCDR, Civil Engineering	
Richard A. Shir	NOAA CORPS	LCDR, Computer Science	
Donald L. Suloff	NOAA CORPS	LCDR, Pub. Admin. - Sci/Tech	
Emerson G. Wood	NOAA CORPS	LCDR Electrical Engineering	
Richard W. Permenter	NOAA CORPS	LCDR, Marine Affairs/Policy	
Thomas E. Gerish	NOAA CORPS	CDR, Meteorology	
David H. Minkel	NOAA CORPS	LT, Oceanography/Hydrography	

Name	Agency	Title	Grade
Virginia E. Newell	NOAA CORPS	LT(jg), Oceanography/ Hydrography	
Roger L. Parsons	NOAA CORPS	LT, Oceanography/ Hydrography	
Gerald E. Wheaton	NOAA CORPS	LT(jg), Adv. Oceanography/ Hydrography	
Donald D. Winter	NOAA CORPS	LCDR, Adv. Oceanography/ Hydrography	
Wanda L. Cain	NOAA	Fish Biologist	GS-9
Ramon J. Conser	NOAA	Oper. Res. Analyst	GS-13
Joseph J. Mueller	NOAA	Ind. Economics	GS-13
Jimmie J. Traynor	NOAA	Res. Fish Biologist	GS-12
Dennis L. Wellman	NOAA	Elec. Eng.	GS-12
Douglas A. Wolfe	NOAA	Dep. Dir. OCSEAP	GS-15
James D. Belville	NOAA	Service Hydrologist	GS-12
John M. Blank	NOAA	Meteorologist	GS-11
Mary C. Newton	NOAA	Meteorologist	GS-12
Paul W. Oliver	NOAA	Elect. Technician	GS-11
Gary M. Carter	NOAA	Supv. Meteorologist	GS-14
Augustin Alicea	NOAA	Elect. Engineer	GS-13
Alonzo M. Brown	NOAA	Meteorologist	GS-12
John A. Ernst	NOAA	Meteorologist	GS-12
Britt M. Mayfield	NOAA	Meteorologist	GS-13
Peggy M. Ward	NOAA	Clerk-Typist	GS-6
Stephen E. Luckey	NOAA	Supv. Geodesist	GS-13
Daniel E. Neumann	NOAA	Nautical Cartographer	GS-11
Johnnie McLemore	NOAA	Cartographic Technician	GS-6
Joan M. Wilson	NOAA	Cartographer	GS-12
Henry F. Diaz	NOAA	Meteorologist	GS-12
David E. McGurk	NOAA	Computer Science	GS-11

Name	Agency	Title	Grade
Annie L. Bell	NOAA	Meteorologist	GS-7
Francidia Bordenave	NOAA	Meteorologist	GS-7
Diane Decaire	NOAA	Meteorologist	GS-7
Joanne F. Flanders	NOAA	Meteorologist	GS-7
Curtis W. Holland	NOAA	Meteorologist	GS-7
Jane Hollingsworth	NOAA	Meteorologist	GS-7
Pamela Joyce	NOAA	Meteorologist	GS-7
Wanda Leach	NOAA	Meteorologist	GS-7
Israel Matos	NOAA	Meteorologist	GS-7
Keith McKenzie	NOAA	Engineer	GS-7
Rafael Mojica	NOAA	Meteorologist	GS-7
Lee A. Palmer	NOAA	Meteorologist	GS-7
Humphrey Planer, Jr.	NOAA	Meteorologist	GS-7
Patricia Ralph	NOAA	Meteorologist	GS-7

In view of the overall employment restrictions, why couldn't this type of training be suspended a year?

Much of the training is a planned effort on the part of operating units to provide their long-range skill and knowledge needs. Many other agencies have large in-house programs to accomplish the same purpose notably IRS, FAA and Defense. In the Department of Commerce it is much more cost effective to use existing facilities and programs in the private sector than to duplicate that capability.

Certainly that training that wasn't crucial to the long-range operating units could be cut back or suspended. But to arbitrarily suspend all long-term training could be as harmful to some Department services as suspending air traffic controller training or technician training in the military.

ASSISTANCE TO OLYMPICS

Last year the Committee appropriated a total of $10,000,000 for payment to the United States Olympics Committee due U. S. boycott of the Moscow Summer Olympic Games. The appropriation provided that $4,000,000 was to be immediately awarded the USOC with the other $6,000,000 to be disbursed on the matching basis of $1 for each $2 raised by the USOC over $8,000,000.

What is the status of these funds?

As of 3/31/81, $6 million of the amount appropriated for the promotion of amateur athletics has been awarded to the USOC.

In order to qualify for these funds, they have collected matching amounts totalling $12 million.

A grant proposal for the remaining balance has just been submitted by the USOC and is now undergoing review by the Department.

From all we read, the organizers of the Los Angeles Summer Olympic Games in 1984 are doing well and do not plan on Federal assistance. Can you assure us that there is no intention by the Reagan Administration to provide financial assistance to the Los Angeles games?

The Administration has not committed 1982 funding for the Los Angeles games.

Knoxville World's Fair

Last week the General Accounting Office released a report critical of the permanent U.S. pavilion being erected at the Knoxville World's Fair for which there is no known after use. Mr. Secretary, this project was initiated by your predecessors, but the overall theme of the GAO report needs to be addressed.

According to the Wall Street Journal, we may be giving a fair to which nobody is going to come and exhibit. How does it look for exhibitors in terms of nations and corporations?

The following list represents the current status of exhibitors at the Knoxville World's Fair:

Nations

9 countries are formally committed to participate
11 countries have space options or intend to participate
12 countries have expressed interest
14 African countries have expressed interest in a joint pavilion

Corporations

3 corporations are formally committed to participate
13 corporations have expressed interest
4 corporations are considering participation
3 corporations will be designated sponsors
7 corporations are being affiliated with the Fair

Others

2 religious groups are committed to participate
2 states are committed to participate
4 states are negotiating participation

Is the Department of Commerce planning federal particpation in any other world's fairs; for instance, we hear of one being planned in New Orleans and possibly another in Alaska?

We are not actively planning additional Federal participation at this time because as of this date no other Fairs have received official approval. An application is currently under review by the Department from New Orleans. However, no other applications have been received.

Is the Department supporting legislation consistent with GAO's recommendations in the Knoxville report?

The Department has met with GAO representatives in connection with a proposed report on this issue. We have also worked with GSA to develop legislation which we believe is consistent with the objectives sought to be achieved by the GAO recommendations.

ECONOMIC DEVELOPMENT ADMINISTRATION

STATEMENT OF HAROLD W.. WILLIAMS, ACTING ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT

ACCOMPANIED BY:

LORIN L. GOODRICH, DIRECTOR, OFFICE OF MANAGEMENT AND ADMINISTRATION

BRIAN B. WHALEN, BUDGET OFFICER

DAVID L. McILWAIN, DIRECTOR, OFFICE OF OPERATIONAL PLANNING AND CONTROL

NANCY A. RICHARDS, DIRECTOR, OFFICE OF BUDGET

PREPARED STATEMENT

Senator WEICKER. Our next witness is Mr. Harold Williams, Acting Assistant Secretary for Economic Development. Mr. Williams is accompanied by Lorin L. Goodrich, Director, Office of Management and Administration, Brian B. Whalen, Budget Officer, and Nancy Richards, Director, Office of Budget.

You can relax. I am not going to sit here and belabor on the subject of EDA. Somehow I have the feeling this is not your decision.

[Laughter.]

Senator WEICKER. I don't believe it was the Secretary's decision, although he said he participated in it. Why don't you synopsize? Your statement will be included in the record in its entirety.

[The statement follows:]

STATEMENT OF HAROLD W. WILLIAMS

Mr. Chairman and members of the committee, I appreciate the opportunity to discuss with you President Reagan's budget proposals for the programs of the Economic Development Administration.

For fiscal year 1981, a rescission of $342,350,000 is proposed; the revised program budget request is $282,300,000. For salaries and expenses, no reduction is proposed to the current funding level of $39,700,000, but the request for a $3 million pay supplemental is withdrawn. A staffing reduction to 531 employees by September 30, 1981 is planned commensurate with the proposed program reductions for fiscal year 1982. Because the reduction would occur late in the year, there would be no savings of administrative funds in fiscal year 1981.

The administration plans to honor all legal commitments for projects which have been approved and bona fide offers made to the applicants. A legal commitment exists where EDA has offered a grant in writing to an applicant with specified conditions, the applicant has accepted the offer, and the applicant has met the conditions of the grant offer. In addition, where overruns have been authorized but not yet officially approved, they will be approved if they meet the requirements of EDA's regulations. EDA will continue to process certain projects which have not yet been approved, but whose sponsors have received written permission from EDA to begin construction and who actually began construction prior to February 27, 1981. This last group of projects will be approved at the completion of processing if the projects meet EDA's guidelines and requirements.

In our planning program, and on certain technical assistance projects where EDA funds support the efforts of organizations, we will provide limited phase-out funding.

Funds for closing out these grants have been going out to those organizations which had not received their renewals, to enable them to close out by March 31, 1981.

The fiscal year 1981 budget retains full funding for our trade adjustment assistance programs; we will continue to process and approve new projects in this program area. We also will have funds to honor defaults on guarantees and to provide for care and protection of collateral. We are requesting loan guarantee authority of $163 million; this will permit us to approve a limited number of guarantees over and above those approved to date. Guarantees will be selected for approval on the basis of expected economic impact and the financial soundness of the firm.

For fiscal year 1982, the revised program budget request is $32 million. This will provide for coverage of defaults on guarantees, but would support no new program activity. The trade adjustment assistance program would continue to be funded at $53,430,000, but would be administered by the International Trade Administration. Guarantee authority for trade adjustment will continue at the fiscal year 1981 level of $42,500,000.

For salaries and expenses, the revised request is $18 million; this will support an end of year staff of 236. This staff is required to monitor active projects, provide loan servicing to our extensive loan and guarantee portfolio, and provide necessary supporting services.

Thank you Mr. Chairman, that concludes my prepared statement. I will be happy to answer any questions you and the committee may have.

1981 BUDGET HIGHLIGHTS

Mr. WILLIAMS. Let me first say I appreciate your introductory remarks very much, Mr. Chairman.

I will just hit the highlights of this statement, Mr. Chairman. The rescission is $342,350,000 for the program budget and the request for the $3 million pay supplemental is withdrawn.

The revised proposal provides a program budget of $282,300,000.

We are keeping with the current funding level of $39,700,000 for salaries and expenses, although we plan a staffing reduction to 531 employees by the end of the fiscal year. That reduction will occur so late in the year that there will be no saving of administrative funds in fiscal 1981.

We have enough funds after the rescission to honor all the legal commitments for projects for which have been approved and for which bona fide offers have been made to the applicant.

The legal commitment means we have approved the grant, announced it, given specified conditions, and the applicant has accepted and met the conditions. On some public works projects, there are overruns that have been authorized, and we will fund those. For a few projects where construction was started with EDA permission prior to final project approval, we will also provide funding.

As was explained previously, we have enough funds in planning and technical assistant grants to phase them out by March 31, and we can negotiate where there is a special hardship, for an additional 30 days.

We have full funding for trade adjustment assistance in our present budget. We are also requesting loan guarantee authority of $163 million, which will enable us to fund additional trade adjustment assistance guarantees, plus $70 million in regular program loan guarantees. We have about twice that many in the pipeline. What we have done is rank the existing pipeline based on economic impact, the financial soundness and the extent to which negotiations are proceeding and are almost concluded. We expect to fund about 25 on 26 projects.

1982 BUDGET REQUIREMENTS

For fiscal year 1982, the revised program budget request is $32 million, which is just enough to take care of anticipated loan guarantee defaults. We will have $18 million for salaries and expenses, which will support a year-end staff of 236.

The trade adjustment assistance program request is $53,430,000 in budget authority and $42.5 million in loan guarantee authority. That will be part of the International Trade Administration budget request.

Thank you very much.

LAKE PLACID

Senator WEICKER. Mr. Williams, in the closing hours of the last Congress, the New York delegation was pushing for a $2,700,000 appropriation to bail out the Lake Placid Olympic Organizing Committee—LPOC. We have heard the State of New York might be willing to assume the LPOC debts if they take title to the facilities. What has been the Department's participation in settling that matter as to Lake Placid?

Mr. WILLIAMS. We have had no part in that except that we have been talking to them about the possibility of New York State taking title to those facilities. We have had a very difficult time with anyone taking title to the facilities. Those grants were made through the Lake Placid Olympic Committee. The facilities were built on land owned by various local authorities including the park district and the State.

The park district and the town have been unwilling thus far to accept a grant of the facilities from us, because with it goes the obligations that are incurred in accepting a Federal grant.

We have been unable to get them to accept that. It has been negotiated. However, if New York State takes them over, that problem would be settled.

We have not asked for additional money. We believe that there are enough funds remaining in the grant that were authorized and obligated to take care of all legitimate program expenses that were authorized by us.

GENERAL ELECTRO CO. OF HARTFORD

Senator WEICKER. When the Secretary was before the committee, I was going to pose the following question to him, but I think it might be a good question to pose to you: In the sense of illustrating the difficulties of winding up this operation; and the hardships that might be imposed. Here was the question as I would have read it to the Secretary. The case in point is the General Electro Co. of Hartford, an Hispanic firm which some months ago applied for an $850,000 loan guarantee.

The company was within 2 weeks of closing the EDA loan when all funding was closed in February, pending the outcome of the proposed decision. Up until that point, while receiving favorable indications from EDA, their applications would be approved, several actions occurred.

The principal officers had invested their life savings, mortgaged their homes, incurred a $20,000 debt in legal fees and left their prior jobs without recourse.

Unless this group can obtain financial assistance, they will face certain bankruptcy and personal financial ruin.

Obviously, this must just be one of the many such examples. I would like to know what happens in these cases?

Mr. WILLIAMS. I am familiar with that project. That is one of the loan guarantee projects which was ranked by our staff when we got additional loan guarantee authority. That ranking was done by the professional staff without any interference from me or from anyone else at a higher level. I just said here are the criteria, go into it and see where it will come out. The project was ranked quite far down the list, and I questioned our financial people about why it was so far down the list. They said that the financial viability of that project was the major thing that ranked low. They were not at all pleased with the prospects for financial success.

Senator WEICKER. Of course, I suppose that is one of the reasons why EDA is there. I am using that as an example of what is going on. What happens to just this one? Are there other ones just like it? What is happening to these people that make all of these preliminary steps in placing themselves in that kind of jeopardy?

Mr. WILLIAMS. I don't know what is happening to all of them except that I would say 99 percent of them are writing to the President or to their Representatives in addition to telling us of the problems they are having. It is a very rough deal.

PHASEOUT OF EDA

Senator WEICKER. Let me ask you this: As you view this situation, do you think that some people might be treated unfairly in this closedown?

Mr. WILLIAMS. I think it is inevitable, that in a situation like this, there is going to be a degree of unfairness.

Senator WEICKER. It is one thing, whether it is this administration or any administration, to stop and start all of these programs, but there are human beings involved in the other end. I will not make my case for EDA. That is a separate subject. But I would not like to see some poor individual hurt by virtue of philosophies and politics of this town when they come to relying on a certain set of criteria.

Mr. WILLIAMS. With the amount of money that was remaining, the Secretary agreed to certain guidelines which seemed to us at the time to be the fairest, and the ones that we could defend as being the most reasonable, given the limited amount of money. But it certainly won't guarantee us against some people being hurt by it. It doesn't only go to individual businessmen, it goes to communities as well.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. Mr. Williams, I have other questions that I will submit for the record. I thank you very much.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Local Public Works Positions

According to the Carter Administration's budget estimate, 25 permanent positions were being requested to provide staff support and defray other administration expenses needed in closing out the local public works program. In contrast, EDA-9 of the Reagan Administration's budget estimates only 7 permanent positions are needed in closing out the program.

What happened between the period the Carter Administration's budget was prepared and this budget to justify a reduction of 18 permanent positions needed in closing out the local public works programs? Will 7 positions allow EDA to adequately monitor projects still under construction and resolve costs questioned in audit reports?

The March 1981 EDA Congressional Budget for FY 1982 reflects a pro-rata reduction of staffing resources from the January 1981 submission. Due to Reduction in Force procedures and the "term appointment" nature of their assignments, all personnel currently assigned directly to the Local Public Works program will have their positions terminated in the first round of staffing reductions. Although no final determination has been made, EDA is currently conducting a study to determine the most effective allocation of staffing resources to meet the needs of all program areas in order to adequately monitor and to insure the orderly closing of all active projects. Some remaining staff will have to be assigned to LPW monitoring and close out of LPW projects. If this requires more than 7 people, additional staff may have to be diverted from other activities.

Staffing for Planning, Technical Assistance, Research and Evaluation

According to your budget justification (pages 33 and 34), no funds are being requested in FY 1982 for planning grants, technical assistance grants, and research and evaluation grants. Yet, 15 permanent positions will be retained in planning, 14 positions in technical assistance, and 7 positions in research and evaluation at a total cost of $2,745,000.

Why does EDA need 36 permanent positions for planning, technical assistance, and research and development when no funds are being requested for these activities?

Positions will be required in all EDA program areas during FY 1982 even though no funds are being requested for new program activities. These positions

are needed for monitoring all open projects, to assure their successful completion. The positions allotted to the planning, technical assistance, research and evaluation functions in the FY 1982 March Congressional Budget Justification were derived on a pro-rata basis from reductions of permanent positions in the January budget. As stated in the justification, the precise distribution of staff is not final, pending an extensive examination of the total agency workload at the revised program levels.

Wisconsin Steel

I would like an update on the status of your loan guarantee for the Wisconsin Steel Company. Isn't it a little unusual for EDA to own a steel company? Have you found any interested buyers?

What is your maximum possible loss?
(SEE ATTACHED ARTICLE)

The January 20 sale was a step in the effort of EDA to dispose of this facility in a manner consistent with our legislative mandate and at minimum loss to the Government. There was no outlay of Federal funds at that point; title was taken by Continental Bank as Trustee for EDA (90%) and International Harvester (10%), in order to forestall an immediate liquidation sale, at liquidation prices, which had been demanded by certain prior lien creditors. The basic purchase "price" at the sale was cancellation of $20 million of the $40 million in debt guaranteed by EDA and International Harvester. In addition, EDA agreed to satisfy certain prior liens. The amount reported in the Journal is a maximum figure and will be offset by negotiated reductions in lien claims and by undisbursed loan funds held by Continental Bank.

The sale enables us to negotiate the settlement of these lien claims and to proceed with efforts to obtain an advantageous disposition of the plant.

EDA's exposure to date (besides the agreement to satisfy prior liens as described above) consists of $37.8 million paid by EDA on May 5, 1980 to the six insurance company lenders, $14.4 million paid on June 5, 1980 to Chase Bank pursuant to the EDA guarantee of 90% of Wisconsin working capital loan, and approximately $4.6 million expended by EDA for collateral protection (primarily to keep the coke ovens in an "idle-hot" posture to avoid collapse).

EDA is currently negotiating with one major purchaser who has expended substantial time and money in a study of possible uses of the facility, and EDA expects to know by mid-April whether there is a realistic possi-

bility that these negotiations will be fruitful. We are also pursuing other expressions of interest in all or portions of the plant. As we have previously advised the Committee, EDA's position is further protected by a limited guarantee from International Harvester against certain shortfalls in collateral.

Revolving Fund

What is the balance in the Revolving Fund and how much must you retain to insure against defaults on your loan guarantees?

The unobligated balance in the Economic Development Revolving Fund as of September 30, 1980, was $88,404,000. The unobligated balance for September 30, 1981 as displayed in the Budget Appendix is $117,404,000. Of this amount $13 million reflects collections of principal and interest on loans under the Drought Assistance Program. These funds will be transferred into the General Fund of the Treasury. An additional $26 million in collections of principal and interest under the Trade Adjustment Assistance program will be deposited into a special account if approved by the OMB and Treasury. $3 to $4 million is expected to be used to pay Care and Protection of Collateral before the end of Fiscal Year 1981 on the Governments equity in Wisconsin Steel's assets until disposition. Thus, the $117.4 million unobligated balance at September 30, 1981 per the Budget Appendix will be reduced by approximately $43 million not including any unanticipated defaults of steel guarantees. At this point, there are no additional needs for purchasing guaranteed steel loans, but funds should be retained as a safety valve to cover any unanticipated defaults since the current exposure on steel loans is approximately $250 million.

Investment and Jobs

Have you or your staff calculated the loss in investment and jobs resulting from the rescission in FY 1981 and elimination of EDA in FY 1982?

No, we have not. We think that the programs being terminated appear to influence primarily the allocation of productive resources leading to a subtraction in potential growth in some areas to enhance growth in others rather than create new jobs.

Funding for Municipal Projects

Infrastructure and related public improvements are truly the foundation upon which private investment is built. How do you propose that distressed cities, facing cuts in federal assistance and with already stretched municipal budgets, finance the necessary streets, sewers, and related amenities? Do you think the private sector will cover these costs?

As the Administration's programs are put in place, inflationary pressures will decrease, interest rates will drop, and the overall economy will move forward. In this improved environment, local tax revenues will increase and private sector investment will increase. Combined with increased productivity in local government operations and the continuing support of the Federal government through block grants, the required financing should be available.

Questions Submitted by Senator Inouye

Revolving Fund

What is expected to be the unobligated balance of the Economic Development Revolving Fund on September 30, 1981?

The actual unobligated balance of the Section 203 Economic Development Revolving Fund as of September 30, 1981 will depend upon certain variables. In the Budget Appendix $117.4 million was projected to be the unobligated balance at September 30, 1981; of this amount $39 million is expected to be transferred to other miscellaneous accounts and $3 to $4 million will be used for care and protection of collateral. This would leave an unobligated balance of approximately $75 million at September 30, 1981. This does not include any future anticipated defaults on steel loan guarantees nor the possibility that EDA could have to cover defaults in excess of its annual Appropriation of $32 million.

Release of Revolving Fund Balances

How much of that unobligated is free in the sense that it could be transferred to miscellaneous receipts of the Treasury?

We would not recommend returning receipts to the Treasury. The PWEDA legislation now requires EDA to pay yearly interest on the outstanding balance of all loans to the Treasury. These interest payments come from the revolving fund, and interest expense in FY 1982 is expected to be $38 million. In addition, even though EDA is requesting an

appropriation in FY 1982 of $32 million to cover loan guarantee defaults, any balance available in the revolving should be retained to cover unanticipated defaults in excess of the apportioned amount. This is particularly important since EDA is requesting no further program funds and would not have the ability to reprogram in case of unanticipated defaults.

Release of EDA Grants and Guaranteed Loans

Last week the Administration released more than $75,000,000 of EDA grants and guaranteed loans What is the effect of the unfreezing of these funds on the proposed rescission of $342,350,000.

The Administration recently released for obligation $20.5 million in EDA grant money and $70.8 million for business loan guarantees. The unfreezing of these funds will have no effect on the proposed rescission of $342,350,000 since these funds are for projects which had previously met EDA selection criteria, and were considered to be EDA commitments at the time the rescission proposal was formulated.

Announcement of Projects

In previous Congressional appearances the Department has defined EDA commitments to grants when the applicant has accepted the offer of assistance; overruns, and where EDA has authorized construction to proceed. Many members were notified last year that they could announce EDA projects, aren't these projects included on EDA's books as an administrative reservation on the 1981 appropriation?

When a member of Congress is informed that EDA has "approved" a project, that project has funds reserved for it on EDA's books. There are times, however, when members have mistakenly announced EDA approvals when what in fact happened was an authorization to submit an application or receipt from EDA of a letter of intent. Funds are not reserved for these latter types of announcements; actual fund reservation occurs only at the time of final project approval

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Question Submitted by Senator Bumpers

National Demonstration Water Project

Last year the Committee provided $1,500,000 for the National Demonstration Water Project while at the same time indicating that future funding of the NDWP should come from elsewhere. The

NDWP has a good record in assisting small disadvantaged communities, particularly minority communities in designing and building small residential water systems. How much of the $1,500,000 has been released to NDWP and when will the balance be released?

The Senate Committee on Appropriations report included language that authorized EDA to provide $1.5 million in FY 1981 funds to the National Demonstration Water Projects, (NDWP). This earmark was subsequently carried over into the Continuing Resolution. Because NDWP and many of its network organizations had no resources to tide them over until the appropriations bill was passed, a pro-rata grant amendment through December 15, 1980 was processed in the amount of $280,000. In January, after the Continuing Resolution was established and funds were apportioned, a project was developed to complete the commitment of $1.5 million. However, the project was not allowed to proceed to final obligation and a revised funding level of $350,000 was established. This amount funds NDWP operations through March 31, 1981. In the absence of other funding sources, all operations of the NDWP program will be phased out at that time.

Question Submitted by Senator Cochran

Impact of the President's budget proposal

I am aware that the Economic Development has frozen its FY 81 funds and that the President's budget proposal eliminates funding for EDA in FY 82. Can you tell me what criteria will be used to determine which ongoing projects will be completed and which will be phased out? How will such a phasing operation be conducted to minimize the adverse impact on all those affected?

EDA will honor all commitments on approved projects, i.e. those which have been offered to and accepted by grantees or borrowers.

On construction type projects, this means that even though actual construction is in progress or in some cases may not yet have begun, full disbursement of the amounts approved and obligated will be made. In addition, funds will be provided to cover overruns where they have been authorized, even though they had not been formally approved. In a few cases, where applicants had begun construction based on written approval from EDA, funds will be approved.

For planning and technical assistance grants, all projects which had been approved prior to the freeze on FY 1981 funds will be allowed to continue until expiration of the grant agreement. Augumentation grants have been made available to grantees who had not yet received expected renewal grants so they could continue operations through March 31, 1981. This was done to allow adequate notice to be given to employees whose services were to be terminated. Organizations whose FY 1981 continuation grants come up for renewal after March 31 will receive no further funding from EDA.

EDA has conducted a comparative analysis of each pending loan guarantee project to determine financial soundness and potential economic impact. New projects are being funded on the basis of this analysis.

EDA's trade adjustment assistance program retains its full funding. New projects will be funded through normal EDA processes.

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REGIONAL DEVELOPMENT PROGRAM

STATEMENT OF GEORGE L. B. PRATT, ACTING DIRECTOR, OFFICE OF THE ASSOCIATE DEPUTY SECRETARY

ACCOMPANIED BY:
THOMAS SAULINO, BUDGET OFFICER
NANCY A. RICHARDS, DIRECTOR, OFFICE OF BUDGET

BUDGET REQUEST

Senator WEICKER. Last, we have the Associate Deputy Secretary, Mr. George L. B. Pratt, on the matter of regional commissions.

Mr. PRATT. Mr. Chairman, the January budget for fiscal year 1982 submitted by the Carter administration did not include funding for this program. The Reagan administration concurs with that decision. In addition, we determined that as part of the President's economic plan to reduce Federal spending the phaseout of the program should be accelerated.

Since we have requested no funds for 1982, it is necessary to begin planning for a phaseout of the program now. Accordingly, a message has been sent to Congress requesting a rescission of $21 million. The rescission would leave an appropriation of $22,838,000, which, together with funds remaining from prior years, will permit the funding of projects which have been approved to date and the payment of operating and termination costs in the remainder of the year.

The Department of Commerce will take the lead in phasing out Federal responsibilities of the commissions. In doing so, we will coordinate our activities with the affected Governors, their alternates on the commissions, and commission staffs.

We ask your support for the budget rescission.

That concludes my statement, Mr. Chairman, I will be pleased to answer any questions you may have.

MX AND TRIDENT MISSILE PLANNING

Senator WEICKER. Two of the regional commissions, Four Corners and Coastal Plains, received appropriations in fiscal year 1981 to perform regional planning relating to the proposed MX missile and King's Bay Submarine Base. These funds were appropriated under the military construction bill. What is the status of these regional plans?

Mr. PRATT. The regional plans are underway with the appropriated funds, Mr. Chairman. As for 1982, we have contacted the Defense Department and they are looking for alternative agencies as a mechanism for funding vehicles for planning in those States.

Senator WEICKER. That is simple. You are a nice man. I wish we could spend more time, but obviously there is nothing further to discuss at this time.

SUBCOMMITTEE RECESS

The subcommittee will recess until 9:30 tomorrow morning.

[Whereupon at 11:20 a.m., Wednesday, March 25, the subcommittee was recessed, to reconvene at 9:30 a.m., Thursday, March 26.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

THURSDAY, MARCH 26, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room S-146, the Capitol, Hon. Lowell P. Weicker, Jr. (chairman) presiding.

Present: Senators Weicker and Cochran.

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

STATEMENT OF JAMES P. WALSH, ACTING ADMINISTRATOR

ACCOMPANIED BY:

DR. FERRIS WEBSTER, ASSISTANT ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT
DR. RICHARD HALLGREN, ACTING ASSISTANT ADMINISTRATOR FOR OCEANIC AND ATMOSPHERIC SERVICES
WILLIAM H. STEVENSON, DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES
DAVID S. JOHNSON, ACTING ASSISTANT ADMINISTRATOR FOR THE NATIONAL EARTH SATELLITE SERVICE
MARTIN H. BELSKY, ASSISTANT ADMINISTRATOR FOR POLICY AND PLANNING
DONALD FOWLER, DEPUTY ASSISTANT ADMINISTRATOR FOR COASTAL ZONE MANAGEMENT
JOHN J. CAREY, DIRECTOR, OFFICE OF PROGRAM EVALUATION AND BUDGET
JAMES SMITH, BUDGET OFFICER
NANCY A. RICHARDS, DIRECTOR, OFFICE OF BUDGET

BUDGET REQUEST

Senator WEICKER. Our first request is that of the National Oceanic and Atmospheric Administration. The request is for $773,348,000, a $54 million decrease from the 1982 base, and provides for 11,635 permanent positions.

Appearing on behalf of this request is James P. Walsh, Acting Administrator, accompanied by several assistant administrators.

Let me say at the outset of this hearing that the cutbacks have been substantial insofar as NOAA is concerned. It has been my contention

after appropriate investigation that these cuts were not made on the basis of substantive evaluation, but rather made to achieve a particular bottom line in dollars.

I have spent, quite frankly, too much time and too much effort, as indeed you and others have, in building NOAA up into a permanent agency over the years only to see it torn down in that fashion. And I say this as prologue to the questions that I am going to ask today because I will not accept, and I want this clearly understood, the answer that somebody was told to make this cut. I want you to justify to me the cut and if you can't justify it, then I want you to say that you can't.

I take full responsibility on my shoulders. Nobody in the administration should take, nor any of you or your assistants, antagonism to the administration. I just want the facts set out here on the table.

It is also true that I have dealt with many of you in the past and either I am an awfully d----- fool or you are awfully d----- liars in what it is we have been doing over the years around here. Maybe that is the case. I don't think it is. But we are going to go at this head-on and if that is the case, I am going to support the administration completely and if that is not the case, I am going to fight like h--- to put this agency where it belongs.

I am not just going to let this work go down the drain. I know these are rather unusual instructions and I have not given them in such a detail to others that appear before me. My heart is in this thing. For that reason, it comes under this kind of special scrutiny.

The floor is yours.

PREPARED STATEMENT

Mr. WALSH. Thank you, Mr. Chairman.

I have a statement of approximately 10 pages which I would like to submit for the record and then just briefly highlight some of the elements.

[The statement follows:]

STATEMENT OF JAMES P. WALSH

Mr. Chairman and Members of the Committee, I appreciate the opportunity to appear before you today to present the Administrations's fiscal 1981 and 1982 budget proposal for the National Oceanic and Atmospheric Administration (NOAA). Yesterday, the Secretary of Commerce outlined for you the Commerce Department's program of support for the President's plan for economic recovery. As Secretary Baldrige indicated, one of the cornerstones of the President's program is the effort to reduce Federal expenditures. The budget proposal for NOAA is fully in accord with the President's plan. It reflects: (1) a reduction in Federal financial assistance programs (e.g. the Coastal Energy Impact Program); (2) fiscal restraint in the case of new programs of national interest (e.g. LANDSAT); and (3) efforts to reduce overhead and personnel costs in all Federal government activities (e.g. weather station closings).

The fiscal 1982 budget request for NOAA amounts to $773.3 million in new Budget Authority to fund essential current program activities and limited program expansions in high priority areas. The proposed budget is $251 million lower than the request submitted to the Congress in January -- a reduction of almost 24% -- and $42 million below the level of funding proposed for the current fiscal year. Funding reductions are proposed in all major program areas.

Despite these reductions, the budget for NOAA will allow for: (1) continued funding of essential public warning services (e.g. hurricane, tornado, flood, and severe storm warnings); (2) continued production of marine and aeronautical charts and maps; (3) ongoing satellite remote sensing activities in support of our enivronmental programs; (4) basic fisheries resource management, development, conservation and related research activities; (5) protection of marine mammals; (6) establishment and maintenance of marine and estuarine sanctuaries; and (7) continued research in the oceanic and atmospheric areas. NOAA has and will continue to pursue its missions as part of the national effort to understand better and manage wisely our oceanic and atmospheric resources.

In my presentation today, I would like to highlight three areas of change reflected in the proposed 1982 budget:

- o First, major policy and program changes which Secretary Baldrige addressed in his statement before the committee yesterday;
- o Second, other significant program changes--both increases and decreases--included as part of the budget; and
- o Third, program changes proposed to achieve savings in personnel and overhead costs.

Major Policy and Program Changes

As part of the overall effort to reduce Federal expenditures several major NOAA grant and loan programs are proposed for termination. These actions will result in savings of $40 million in 1981 and $81 million in 1982. The assistance provided through these programs is deemed to be either no longer a compelling priority or an activity which can be more appropriately picked up by the states, local governments, or institutions which have received funding in the past.

The Coastal Energy Impact Program (CEIP) which includes energy impact formula grants, planning grants, OCS State participation grants, coal and alternative ocean energy, impact grants, credit assistance, is proposed for termination. This program was designed largely to help mitigate the perceived impact on coastal communities of rapid OCS oil and gas development. The "boom/bust" problems which were expected with such development have, however, not occurred. The affected coastal states have through CEIP assistance and the Coastal Zone Management (CZM) program enhanced capability to address coastal energy development related problems. For these reasons the Administration believes that further Federal funding is questionable and can be eliminated. Along with the termination of these two programs in fiscal 1982, the budget also proposes the rescission this year of $40 million in currently available, but unobligated CEIP loan funds.

The Coastal Zone Management (CZM) program administration grants program is proposed for termination. This program which was started in 1972 has provided both developmental and administrative support to coastal states to

assist them in planning for the rational use of their coastal areas. The Administration believes that CZM has largely achieved its intended purpose. The states which have participated in this program should by now recognize the importance of sound management of their coastal areas and resources and be capable of continuing to fund CZM activities. The termination of this program will result in a savings of $37 million.

The Sea Grant program which was created in 1966 to foster marine research, education, and resource development through universities and extension services is also proposed for termination. Over the years the Sea Grant program has developed a network of institutions with the capability to conduct marine research and provide marine related information services. At present there are 16 designated Sea Grant colleges and some 30 other academic and research institutions addressing local, state, and regional needs. Now that this network is in place the Administration is proposing to turn over responsibility for its continued support to the states and industry, which are the primary beneficiaries of the projects undertaken by these institutions. Termination of direct Federal funding to institutions through the Sea Grant program, will not preclude other Federal agencies and programs from funding projects, related to their own missions, through these institutions. The termination will result in savings of $37 million in fiscal 1982.

In the fisheries area, two categorical state grant programs--one supporting conservation and development of anadromous fishery resources and the other supporting commercial fisheries development--are proposed for termination along with a reduction in fishery development grants provided through the Saltonstall-Kennedy fund. These reductions will result in savings of $17 million in fiscal 1982. For the most part, the specific projects funded through these grants are more appropriately funded by the states or in the case of the developmental projects, represent activities which the fisheries industry itself should undertake if a real economic opportunity exists.

Beyond these proposed terminations and reductions in grant and loan programs, the budget also reflects the proposed elimination of major new funding for the National Oceanic Satellite System (NOSS) and a major reduction from the January budget in the civil operational land remote sensing satellite

system (LANDSAT). While both of these programs are of national interest, each requires large new capital investments which, in light of the current economic situation, can be delayed. NOSS was proposed in 1981 as a tri-agency effort involving NOAA, NASA, and DOD/Navy, with the objective of establishing, by 1986, a five year demonstration of ocean related remote sensing capabilities. The delay of NOSS will result in savings of $16 million in 1982. Consistent with this proposal, $6 million in currently appropriated NOSS funds are proposed for rescission this fiscal year. As one alternative to NOSS, we believe that Nimbus 7 satellite data can be processed and used to assess the value of some types of global ocean data to ocean operations, weather forecasting, and climate assessment.

Major new funding for procurement of a third LANDSAT spacecraft and parts for a fourth satellite to provide land remote sensing data in the 80's has been eliminated from the budget. But NASA will proceed with the new LANDSAT D and D', which are designed to provide LANDSAT data through the mid-80's. These two NASA satellites should provide an adequate demonstration between 1982 and 1988 of the value of this data. Legislation to authorize NOAA to assume responsibility for operating LANDSAT and to develop the framework for establishment of a system in the private sector is being drafted by the Administration and should be submitted to the Congress shortly.

Other Significant Program Changes

In addition to major policy and program changes which I have just outlined, the fiscal 1982 budget also includes a number of other significant program changes which I would like to highlight. These include further program reductions and elimination of certain new funding proposed in the January budget. They also include requested new funding to proceed with high priority program activities.

A saving of $9 million in fiscal 1981 is proposed through the eliminations of the planned education center and reception center at the NOAA Sand Point consolidated operations and research facility, now under construction in Seattle, Washington. The primary use of the education center would have been to train National Weather Service personnel. This training will continue at our present leased facility in Kansas City, Missouri.

A savings of $2 million is proposed by reducing the level of activity in the aquaculture program by approximately one-third. This reduction will occur in an area which can and should be funded by the private sector, based on the economic potential which exists.

In addition to these program reductions, a number of proposals in the January budget to expand program activities have been eliminated. Specifically, funding to expand the undersea research program, enhance current efforts in the fisheries trade area, and initiate an intergovernmental climate program has been excluded from the budget. Upon further review it was determined by the Administration, that these new activities did not represent high priority needs in the face of the overriding goal to reduce the level of Federal spending.

NOAA's efforts in all of these areas will continue. In the undersea research area NOAA's research efforts will be supported through the HYDROLAB, SECURE, and University of Hawaii underwater habitat programs and through use of the ALVIN submersible. Fisheries trade efforts will continue to be supported by not only the National Marine Fisheries Service, but by the Department's International Trade Administration as well.

In the climate area, $33 million in funding for the NOAA climate program and National Climate Office remains and research and data collection efforts in this important area of endeavor will continue. One of the high priority program increases which remains in the budget request for 1982 is a request for additional funding to begin work on establishing a users climatological data base.

Other program increases included in the budget are similarly aimed at high priority areas where it is critically important for the future that investment be made now. These include funding to improve our weather forecast and warning capabilities through the deployment of the new AFOS communications network, initial steps in development of a next generation of weather radar (NEXRAD), procurement and installation of an improved automated surface observation demonstration system, and upgrading of our Central Computer Center equipment, which is reaching the end of its planned useful life.

Funding is also requested in the budget to augment our ship rehabil-

itation program. Our ships, now averaging 19 years of age, will soon be too old for rehabilitation unless we undertake this effort now. A successful program can extend by 10 years the normal 25 year lifetime of a ship and defer the costly need for replacement.

In the research area we are requesting funding to proceed with a program to acquire a new computer system for our Environmental Research Laboratories. The present system, pieced together through government surplus, is incompatible, unreliable, and impedes our research efforts. We are also requesting funding to undertake two very important research studies. The first of these, in response to Title VII of the recently enacted Energy Security Act, will explore the sources and transport of acidic particles. The acid rain phenomenon has begun to raise serious concerns not only in this country, but in Canada as well. The other research effort will study ice crystal formation. Improving our understanding in this area is necessary to provide a foundation for any further development in the weather modification area and in particular in the area of precipitation augmentation.

The final increase items I would like to highlight are important to our domestic fishing industry and to our developing ocean minerals and thermal energy conversion industries. The first increase supports the development of improved socio-economic and harvesting data, which is used in producing the regional fishery management plans. Under the Fishery Conservation and Management Act NOAA is required to acquire and analyze fisheries data for development of the plans which are essential to the operations of our domestic industry and assignment of foreign catch quotas. Without the development of this data our fishery management plans would be subject to possible domestic and foreign litigation and our position in international fishery negotiations would be weakened.

The second increase will provide needed funding to put in place a domestic legal and regulatory framework for the developing U.S deep-seabed mining industry and ocean thermal energy conversion industry. Both of these new industries hold great promise for the U.S., the first offering a possible stable supply of key strategic minerals, and the other a possbile source of renewable energy.

Personnel and Overhead Savings

The third and final area I would like to touch on today concerns proposed personnel and overhead cost savings. The President's revised budget for NOAA establishes a full-time permanent employment ceiling of 12,247 for fiscal 1981 and 11,930 for fiscal 1982. These ceilings represent a 3.6% and 6.1% decrease respectively from the 12,700 employment ceiling for both 1981 and 1982 reflected in the January budget. These decreases in employment are fully supportive of the President's expressed desire to reduce the level of Federal employment. Of the total reduction of 770 called for by the end of fiscal 1982, 61 are directly related to the program reductions I have already mentioned, another 190 are positions engaged in various reimbursable activities, and the remaining 437 will have to be taken in other NOAA program areas.

These personnel reductions will be achieved through a combination of attrition, retirements, voluntary reassignments, and where necessary reductions-in-force. Personnel reductions will occur in all major program areas with a larger proportion occurring in headquarters and overhead activities.

We have already gone through the process of identifying where these personnel reductions will have to occur. In doing so we have attempted in every area to identify lower priority programs and activities where savings could be realized. The most noteworthy are the proposals to lay-up the NOAA vessels OCEANOGRAPHER and KELEZ, reduce the level of fisheries research and enforcement activities, close 38 part-time Weather Service Offices, and convert 8 Weather Service Forecast Offices to a reduced status.

Full details of the specific programs and areas where personnel reductions will need to occur are now complete and will be made available to the committee.

In addition to the savings of $12 million we expect from these personnel reductions we are also estimating savings of $2.3 million from reductions in our previously proposed levels of travel, consulting services, and equipment purchases. These reductions are also supportive of the Administration's desire to reduce expenditures in each of these areas.

BUDGET BREAKDOWN

Mr. WALSH. My goal here is to set forth for you as factually as possible the content of the budget and the changes that are being recommended by the Reagan administration. Perhaps it would help in getting some idea of our agency. I have brought this chart, which I find to be fairly effective on occasion to understand how we are organized, how we are broken down and how the budget numbers are allocated across our major program elements.

Very simply, at the head of the agency we have the Administrator complex and his staff, including the proposed new Office of Ocean Minerals and Energy. We have an Office of Policy and Planning and General Counsel.

Then NOAA is broken down into six basic elements starting first with the National Marine Fisheries Service, then the Office of Coastal Zone Management. In the middle is our Office of Management and Budget that provides support for us in many ways. Then we have the Office of Research and Development. The largest component of NOAA is the Office of Oceanic and Atmospheric Services, and finally we administer the National Earth Satellite Service.

Let me now just briefly go over for you the budget request. It reflects, as you indicated, Mr. Chairman, first of all, a reduction in Federal financial assistance programs, for example, the coastal energy impact program. Second, it reflects fiscal restraint in the case of new programs of national interest, for example, LANDSAT satellite program. Third, it reflects a reduction in effort to reduce overhead and personnel costs in all Government activities; as an example, our weather station closing proposal.

Our 1982 budget request amounts to $773 million in new budget authority. The proposed budget is $251 million lower than the request submitted to Congress in January, a reduction of 24 percent and $42 million below the level of funding proposed for the current fiscal year.

Funding reductions are proposed in all major program areas.

Despite these reductions the budget for NOAA will still allow for continued funding for: (1) Essential public warning services, for example, hurricane, flood, tornado, and storm warnings; (2) Continued production of marine and aeronautical charts and maps; (3) Ongoing satellite remote sensing activities in support of our environmental programs; (4) Basic fisheries resource management, development, conservation and related research activities; (5) Protection of marine mammals; (6) Establishment and maintenance of marine and estuarine sanctuaries; and, (7) Continued research in the oceanic and atmospheric areas. NOAA has and will continue to pursue its missions as part of the national effort to understand better and manage wisely our oceanic and atmospheric resources.

Let me briefly highlight the major program changes which were already, I believe, touched upon by Secretary Baldrige yesterday.

In the major policy and program change area, there are sizable reductions indicated. These will result in savings of $40 million in 1981 and $81 million in 1982. The rationale for these reductions is that these areas either no longer have priority or are activities which more appropriately should be picked up by the States or local institutions which have received funding in the past.

In regard to the coastal energy impact program, we are proposing to not only terminate the program as was recommended by the Carter administration, but also to rescind $40 million in loan assistance funds that have already been appropriated.

In addition, we are recommending, as you know, the termination of the Coastal Zone Management Administration grant program. The program was started in 1972 and it is believed that the program has largely achieved its intended purpose.

The other area of recommended change is termination of the sea grant program which would result in savings of $37 million in fiscal year 1982.

In the fisheries area there are two categorical State grant program areas proposed for termination. These are the anadromous fisheries program and the commercial fisheries R. & D. grant program.

There are, in addition, reductions recommended in the Saltonstall-Kennedy fund.

Finally, Mr. Chairman, in another major area relating to these programs, major policy changes involve the LANDSAT program. As you know, NOAA has been designated as the lead agency for handling LANDSAT. In our budget request earlier this year, the Carter recommendation was $124 million for additional satellite systems, for improving the ground system and the data storage system. We are no longer recommending those funds but are recommending only about $2 million for planning money and for preparing to take over the NASA satellites when they are launched. The first is expected in 1985.

In addition, we are recommending termination of the National Ocean Satellite System, which will involve a rescission of $6 million, and elimination of $16 million in our 1982 budget request.

There are several other major significant program changes. Let me quickly highlight those as well. First of all, with regard to our Western Regional Center in Seattle, which is presently under construction, we propose a rescission of $9 million associated with the Education Center and the Reception Center at the Sand Point facility. The Education Center by the way, involves only the transfer of personnel from Kansas City, Mo. to the Seattle area and that is the reason why it is being recommended for elimination. The aquaculture program is proposed to be reduced by one-third. There are a number of reduction proposals in other areas that I am sure you are familiar with, including the undersea research program and in the climate area. We are proposing, in addition, to reduce some of the items that we requested as additions in our last budget.

We are, however, proposing several increase items. For example, we are asking for additional funds to deal with our communication system in the National Weather Service.

We are asking for additional funds in the climate area and weather modification and acid rain. We are proposing to begin the purchase of two new computer systems: a replacement of our central computer in the National Weather Service, the basic computer system for weather forecasting; and the purchase of a new computer system for our environmental research laboratories.

We also are asking for additional funds in 1982 to begin a larger base program to implement our responsibilities in ocean minerals and energy. We are working feverishly to implement two new pieces of legislation that Congress enacted just last year.

The third area I want to touch upon, Mr. Chairman, is the personnel and overhead savings area. As you know, the President had requested that there be reductions in all of the Federal agencies. For NOAA the reductions will occur both this year and next year. Our personnel ceiling has been reduced from the 12,700 employment ceiling that was allocated to us to be met at the end of this fiscal year.

We are going to have a further reduction below 12,700, a reduction of 453 people in 1981, and by the end of 1982, a furtther reduction of 317, bringing the total reduction recommended to 770 people.

These reductions are being taken evenly across NOAA. They involve, as you noted, closing of weather stations. We are proposing to lay up two additional ships in order to save personnel this year, bringing the total to three ships proposed for the reduction. There will be about $12 million in savings associated with these reductions.

I might also add, before I close, Mr. Chairman, that there are a number of actions before this committee relating to the budget and it would be difficult to understand the overall budget request without also pointing out that we have a series of rescissions before you.

Approximately $30 million in rescissions were recommended by President Carter that are still being embraced by President Reagan. In addition, there are rescissions in several other areas I mentioned—the loan program, CEIP, the Education Center, and the NOSS program. We have requested supplementals that are related to several areas, including in particular, additional costs associated with the pay raise.

As you know, the pay raise is usually handled each year by a supplemental. The supplemental that has been put forward represents about 70 percent of the cost of the pay raise. We expect shortly to be sending you recommended reprogramings that will cover the $11 million or so which reflects NOAA's required absorption of the pay raise. Therefore, we have not only two budgets to look at, but we have a series of rescissions, a number of supplemental requests, as well as future reprogramings that are going to result in adjustments in all our programing areas.

Mr. Chairman, that concludes my prepared statement. I am happy to try and answer any questions you may have.

LANDSAT

Senator WEICKER. What I would like to do now is to go over the program reductions and the justifications for the various reductions. I don't know much about the LANDSAT operation. Maybe someone would like to indicate to me what that is.

I imagine that some of my agriculture friends might be a little distressed with that. Who wants to step up to bat on that?

Mr. WALSH. I will take care of that, Mr. Chairman. For the last couple of years, NASA has been flying a satellite system, an experimental system to develop techniques for remote sensing certain features on the land that are related to a number of activities, including

agriculture applications, land planning, search for oil and gas and the like.

It was decided in the Presidential review that this system would move to an operational phase. NOAA was designated as the lead agency. We submitted an interim plan to OMB which will form the basis for the development of an operational system. One of the other indications in the Presidential system is that there would be spin-off to the private sector, that eventually the LANDSAT system would be operated by the private sector.

The Federal Government has made a major policy decision not to make a major investment in upgrading the system beyond the two NASA satellites that are currently in the budget. NASA has about $80 million in their budget to continue to operate two new LANDSAT satellites; one would be launched in 1983, the other one would be launched about 3 years later. There will be a new operational LANDSAT satellite, we expect, in 1988. It will have one of the new thematic mappers, which give high resolution and broader bands of spectral analysis.

Therefore, we believe that the new technology that is on the LANDSAT satellite will be tried and tested during that period of time and decisions will be made with regard to spin-off of LANDSAT to the private sector.

We are no longer asking for additional funds for satellites beyond LANDSAT D and LANDSAT D', the next two satellites. We are not asking for the improvements in the ground system that were recommended. We feel that the NASA program is the minimum activity necessary to indicate whether there is any private sector interest in the program.

Our budget does include $2.1 million for planning and coordination and for some ground system modifications at the data center in South Dakota in order to handle the new kind of data coming from the LANDSAT system.

We have a system. We are not going to expand it beyond the minimum necessary because it is a large-cost operation and we think the program provides an adequate basis on which the private sector can decide whether to pick it up or not to pick it up.

Senator WEICKER. Correct me if I am wrong. What you are saying is the NOAA initiative in this area is being duplicated by NASA?

Mr. WALSH. No; what has been decided, Mr. Chairman, is that NASA will fly the first two new satellites as an experimental operation. Under the previous budget request we were to take over funding the satellites after the first two were flown. We would then include in our budget the cost of those satellites. Our budget now provides for LANDSAT planning, but in the out-years there is about $36 million for NOAA to assume the operation of the two satellites to be launched, but no new money for new satellites.

We had originally proposed to buy Lockheed parts for the follow-on system. We have decided now not to put any money in the Federal budget for any satellites except the two that are now being funded by NASA.

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Senator WEICKER. These two have yet to be launched?

Mr. WALSH. They have yet to be launched. I expect the first one will be launched in 1983.

Senator WEICKER. So the elimination of this money is not going to actually affect the program with the exception of your lead time? Should you decide to proceed with the third satellite would be to cut back?

Mr. WALSH. That is correct. The way satellites are funded in our budget is that everything is paid for up front over a period of time. You pay it off ahead of time in big lump sums, and then the thing gets launched. What we are saying now is we are not prepared to invest any money in that third satellite. If the life of those satellites is up to the 3 years we expect, there is still a 1- or 2-year period in which the Government has the option of considering whether to buy those first two satellites.

Senator WEICKER. Assuming that the technology is beginning to look successful, when would be the latest date that a commitment would have to be made for this third satellite?

Mr. WALSH. Assuming the technology is available, it will be included in the 1984 budget.

Senator WEICKER. I am satisfied with this. I notice the particular interest of Senator Cochran, coming from an agricultural State. Is there anything you want to ask about this?

Senator COCHRAN. Thank you, Mr. Chairman. I was curious as to what the practical impact will be on the private sector and the local governments by making this reduction and changing the plans for this other satellite.

Mr. WALSH. We still have a number of programs. As you know, the AGRISTARS program, which is related to practical application of LANDSAT data to agriculture, is being continued.

Senator COCHRAN. If that is being cut back, satellite availability is going to cause a sharp reduction in the work of the Department of Agriculture in that area. That is a function in trying to make production forecasts worldwide.

Mr. WALSH. Part of the problem is that, as you know. The present LANDSAT satellites are either deteriorating or have stopped functioning. There is a problem between now and the new LANDSAT D. However, there is not much you can do in this year's budget to change that problem. The Federal Government is proposing to spend $58 million in AGRISTARS this year.

So it is not a small program in terms of applications. There are some problems in terms of satellite availability. But USDA is still proposing a $2 million increase in their budget for AGRISTARS this year over last.

NASA is increasing their AGRISTARS budget by $3 million. Ours is at the same level, $3.3 million.

Senator COCHRAN. Thank you, Mr. Chairman.

Senator WEICKER. NOSS?

NATIONAL OCEANIC SATELLITE SYSTEM

Mr. WALSH. The National Oceanic Satellite System was one that was aimed for an operational test, a new satellite system to provide weather information to the Department of Defense and NOAA for improving

weather forecasting, climatological studies and the like. It was to be a new start.

Because of the large expenditure involved, about $900 million over a 7-year period, and the fact that we have gotten along without it up to now, it was felt that it could be put off and deferred with a fairly large saving.

In addition, there was concern within the Department of Defense with regard to their priorities. They were under great pressure. They are putting into effect now a couple of new satellite systems and are also in the process of building up our defense capability. As a matter of priorities, NOSS was dropped from the budget request.

We still think we are going to get some satellite data that will help us, for example, from the NIMBUS satellite. We still get information from our own orbiting satellites which relate to ocean forecasting.

It is not a brand new sensor that would come along with this new satellite system, but basically a question of can you afford to spend that much money right now and the answer given is no.

Senator WEICKER. Doesn't this go to the heart of one of NOAA's missions?

Mr. WALSH. Clearly, better weather forecasting over the ocean is one of the areas in which we have been striving for some time to improve. However, the way it breaks down in terms of missions, most of the operational leads were those of the Navy. We have divided up our weather forecasting responsibilities with the Navy. Theirs are basically related to the high seas beyond the 200-mile limit; we focus on the 200-mile limit.

Obviously, they are the ones that have the strongest justification in terms of operational application because of their high seas forecasting responsibility. Clearly, however, we believe that the NOSS system can provide us with an additional aid in forecasting the weather over ocean areas since the biggest problem we have is that we have only limited observations.

If you don't have observations it is very hard to forecast the weather. On land, you have got any number of ways to develop these observation systems. But over the ocean we are limited.

So it would have helped improve the forecasting, but not necessarily in the short term. We still have an experimental system. SEASAT showed that the sensors were quite good, even though SEASAT lasted a month; nonetheless, they still are in the experimental phase. We don't know for sure whether it is really going to be that effective, therefore, we decided not to request funds for NOSS.

Senator WEICKER. In other words, you do not have the same weather forecasting capability over water that you have over land?

Mr. WALSH. Certainly not. No, sir.

Senator WEICKER. How much of the Earth is water?

Mr. WALSH. Three-quarters. Most of the economy takes place on the land.

Senator WEICKER. Up to this point.

Mr. WALSH. Up to this point.

Senator WEICKER. What is the Navy's share of the NOSS program?

Mr. WALSH. This year it was broken down 50 percent for the Navy, 25 percent for NASA. Ours was $16 million, so I suspect theirs was $32 million.

Senator WEICKER. Everybody has thrown this out of their budget?

Mr. WALSH. It is all gone, yes, sir. We are rescinding money appropriated to date. We have $6 million appropriated last year, in the 1981 budget. We are proposing that be rescinded.

Senator WEICKER. Do you feel that the state of technology is such that if you had the money this is the time when we should proceed?

Mr. WALSH. I will defer to Dave Johnson on that question.

Mr. JOHNSON. Mr. Chairman, the technology has essentially been developed and proven on the NIMBUS satellite and SEASAT. So it is available with some modifications if we decide we should proceed.

Mr. WALSH. Of course it has not been tested in an operational mode yet.

Senator WEICKER. I understand that.

Mr. JOHNSON. The primary emphasis of NOSS was to conduct an operational demonstration.

Senator WEICKER. Given the money, this would be the point to take it into the operational phase?

Mr. JOHNSON. The technology has been developed where you could do that.

Senator WEICKER. This to me is where we get penny-wise and pound-foolish. I would concur so that nobody feels there is any prejudice I have, I concur on the decision on LANDSAT. This is a completely different situation.

Would you like to go through the list of frauds, wastes, and abuses that we have occurred in the sea grant program that caused you to ax it? I heard a few yesterday.

SEA GRANT

Mr. WALSH. The largest waste of money in the Sea Grant College that was ever in my mind committed is that they paid me some money to go to college 10 years ago. [Laughter.] They wasted their money.

Senator WEICKER. I do not think so.

ADDITIONAL COMMITTEE QUESTIONS

Senator COCHRAN. Before we go further, can I submit some questions in writing? I will have to go to another meeting.

Senator WEICKER. Senator Cochran, please, obviously yes, in writing and if you have some questions now, please ask anything that you care to.

Senator COCHRAN. I would rather submit them in writing, and also to the next witness, the Maritime Administration. I have a few questions for them, on shipbuilding.

Senator WEICKER. All those questions will be submitted and as I indicated to you we are delighted to have you here. Do you have anything you would like to ask before you leave.

Senator COCHRAN. I will just submit them if that is all right. Thank you.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR THAD COCHRAN

FLASH FLOOD COORDINATION

Question. In April 1979, the Pearl River flood did enormous damage, especially in the Jackson, Miss. area. At that time, I requested the General Accounting Office to review the Government's flood fighting capabilities in light of that flood disaster. The GAO subsequently recommended in its report that the U.S. Geological Survey and the National Weather Service improve their communication and coordination, especially in sharing their information with State and local officials on a timely basis. Can you supply for the record what steps have been taken by the National Weather Service to respond to the GAO's recommendation?

Answer. Corrective actions taken by the National Weather Service (NWS) as recommended in the GAO report are:

(a) A hot-line was installed to improve coordination between offices of the Corps of Engineers in Mobile, the U.S. Geological Survey in Jackson, and the National Weather Serivce in Jackson and Slidell.

(b) Routine contacts are currently made between these offices during periods of high water (20 feet or more) on the Pearl River at Jackson to discuss forecasts and reservoir operations.

(c) The National Weather Service has installed six new automatic telemetering rain gages in the Upper Pearl River basin to improve network coverage. In addition, the river gage at Kosciusko and both the river and rain gage above Ross Bartnett Reservoir have been telemetered. And the NWS cooperated with the Corps of Engineers in installing new river gages near Philadelphia.

(d) New rainfall observing procedures are in operation by the NWS office in Jackson that require observers to report any time of the day when one-half inch or more of rain falls.

(e) Phone contact is maintained by the NWS Forecast office in Jackson with Mayor's Emergency Operation Center (EOC) during minor flood situations. In a major flood event the NWS places a staff member full time in the EOC.

The value of the hot-line and improved coordination procedures were evident during the flood a year later (April 1980) at Jackson.

TUPELO, MISS. RADAR

Question. The Carter administration submitted a rescission of 1981 appropriated funds provided by Congress for a radar weather station in Tupelo, Miss. That area has been vulnerable to tornados. The justification for the rescission seems to be based not on budget concerns but rather that Tupelo is adequately served by existing weather stations. Could you review how you arrived at that decision in light of the scientific data supplied by my constituents to the contrary? Is this still true in light of the cutbacks at 8 full-time weather stations and 38 part-time weather stations?

Answer. Based upon data at our disposal, it is our belief that the existing network and local warning weather radars provide adequate weather radar coverage of Tupelo. Northern Mississippi is within the 125 nautical mile radius of network radars at Memphis, Tenn.; Jackson, Miss.; and Centreville, Ala. The 125 nautical mile radius is considered the effective range for measuring storm tops and intensities and estimating rainfall. However, many severe storms are detected at greater ranges. In addition to these radars, our network radar at Nashville, Tenn., provides some coverage in extreme northeastern Mississipi. The Columbus Air Force Base local warning radar also covers the Tupelo area. Reports from this radar are phones to our Weather Service Forecast Office (WSFO) in Jackson.

Weather radar is the primary tool used in our severe weather warning program. However, a total detection system uses radar data, satellite photographs, surface weather observations, trained volunteer spotters, and reports of powerline breaks to identify and locate severe weather events. Presently, existing stations in Mississipi and neighboring States provide this service for the Tupelo area.

We recognize the concern felt by citizens of northeastern Mississippi about severe thunderstorms and flood-producing rains. We intend to continue our efforts, with avail-

able resources and the assistance of local officials and interested volunteers, to maintain a viable hazards warning system in the Tupelo area.

None of the 8 full-time WSFO's or 38 part-time WSO's are in the Mississippi warning and services area; consequently, there is no impact.

SEA GRANT

Mr. WALSH. On sea grant, Mr. Chairman, the decision was one of policy more than a decision that it has been a total waste. I think that is what the Secretary told you yesterday; that is, the policy of this administration, that the Federal Government ought to begin to get out of more and more things and turn more and more of these activities over to the local populace, State, and local government, local industries that have this larger stake. The decision with regard to sea grant was made on that basis, on a major policy basis.

That is not a new argument of course. That argument to be very frank with you is one that has been debated for many, many years in the sea grant program, by one Office of Management and Budget after another. The fact that sea grant showed up on this list was no real surprise because there has constantly been a view, going back for 10 years, that the sea grant was a seed program and that it's purpose was to generate the base, to generate the expertise and then have that expertise attract other sources of capital. Now that the program has operated for 15 years, the argument is that its very success opens it up to perhaps going out into the world on its own. That is the principal argument.

Senator WEICKER. Let us go back on this a little bit. First of all, how many States do you feel, have superimposed planning?

Mr. WALSH. We have programs in about 30 States I think. But there are 16 institutions that are called sea grant colleges. The advisory services are in 31 States.

Senator WEICKER. How many States would be into this business? How many were into this business before sea grant came along? I imagine for example, the University of Washington,——

Mr. WALSH. Of course the advisory services which is one of the very unique parts of it were not in existence prior to when it got started. A lot of coastal institutions were doing work in this area. For example, a lot of local community colleges I am sure along the east and west coasts were providing some measure of training for fishermen and doing research on various ocean and coastal problems. Certainly in 1965 it was nowhere at the level it is today and obviously sea grant has played the role it was supposed to play in generating a larger center of gravity throughout the country. In terms of what is going to happen at individual institutions and States is one of those things that is very hard to predict because it just depends on the other forces that they have to contend with. Obviously they are seeing cuts in many areas and they are going to decide what is most important to them. In many places they are going to decide that coastal business and ocean business is top priority. In other places they may not. It is hard to predict.

Senator WEICKER. It is not very hard for me to predict what is going to happen in this area, as I see the impetus to move the Federal Government ahead, and by that I mean very little impetus, either among

Senators and Congressmen or public constituencies. I do not see where there is going to be any great impetus at the State level, especially with the funding restrictions, monetary restrictions that they have; revenue restrictions that they have.

And indeed as even now with the Federal Government in there I say it is far more commonplace to see closings in laboratories and various ocean-oriented institutions than openings. I suppose the other thing that is of concern to me or the other great benefit of sea grant is that you did diffuse your resources; in other words, to get as much input from the different places as possible.

Mr. WALSH. Yes, sir. As a matter of fact, that has been something of a source of a problem to us because every college wants to be a sea grant college. It is pretty hard to make everyone a sea grant college and try to get more and more institutions when money has been tight. There have been quite a number of participants. Over 4,000 people are grantees, 460 research projects, 110 education projects, and 96 advisory projects in the program.

Senator WEICKER. Have you had a chance to see the economic appraisal written by the Ad Hoc Sea Grant Task Force.

Mr. WALSH. Yes.

Senator WEICKER. Do you think that is strictly a matter of puffing or do you think there is much fact in that?

Mr. WALSH. I have not analyzed it from the standpoint of how much is self-serving and how much is not. I suspect there is a measure that is self-serving and a measure that is not. But it seems to indicate a very positive impact. I do not have any information on which to say that that is not true. But again, as I said before, the point of the cut was related to its success, more than anything else, since that it has now done well, now it ought to go back to the States because that State match does make the people very locally oriented and in many cases they do not want to be associated with the Federal Government.

If a Federal marine advisory agent went down to some dock in New England and said I am from NOAA, and I am a Federal marine advisory agent, they would throw him out on his ear, because they would figure the first thing he would do is go to the law books and try to enforce a fisheries act on them. So they have tried to disassociate themselves as much as possible from that and—as a matter of fact, that has been part of the success because they have been local, have been related to the local problems and have not been closely associated with the Federal Government. They have been very successful in the marine advisory services. So now the question comes to picking it up somewhere else.

Senator WEICKER. But of course the question also raises how these States deal with the common problems and the common opportunities of this common resource. That gets to be pretty big stuff. I am not sure they are geared up to handling the migration of fish, the ocean currents, the impact of search for energy on the ocean floor. I can understand how they could restrict themselves to the particular activity that is off their shores, but of course that is not the way to really come at that with the resources. I know Massachusetts does not have any ocean boundary lines. It is not a Massachusetts problem. It is Massachusetts,

Rhode Island, Connecticut, Maine, New York, and even there I hesitate to go out to the regional lines that you can draw up.

Who heads up sea grant?

Mr. WALSH. Ned Ostenso is the Director of sea grant and Ferris Webster is the Assistant Administrator.

Senator WEICKER. Was this Ned's recommendation that the sea grant program be eliminated? Mr. Webster?

Dr. WEBSTER. No; it was not, sir.

Senator WEICKER. Was he told that this was the end of this program? I would like to now exactly what was conjured up, from whom?

Mr. WALSH. Let me try to answer that question, Mr. Chairman. The first round of analysis by the Reagan administration focused on what I referred to in my statement at the outset as the major policy areas. The policy decisions were made that we ought to try to eliminate all Federal financial assistance to States and to industry. Those were identified as areas in which the budget would be reduced. In addition they focused on new starts that were big dollar items like the satellite system and then we go into the personnel questions as another order of cuts. The first two categories were identified by the Office of Management and Budget and by President Reagan's advisors.

Senator WEICKER. Those are the new starts?

Mr. WALSH. The two policy areas, the new starts as well as the Federal financial assistance programs going to industry and States.

Senator WEICKER. Recommended by the Reagan people?

Mr. WALSH. That is right.

Senator WEICKER. Who is Reagan's NOAA advisor?

Mr. WALSH. I believe most of the work, and advice that was put forward on that, was done by the Office of Management and Budget in conjunction with the budget office of the Department of Commerce and in collaboration with talking with the budget office of NOAA.

Mr. PARKER. Excuse me, Mr. Chairman, prior to that, the transition team was assigned to the Department of Commerce and had done a good bit of work. I believe they had at least one or maybe more individuals working within NOAA.

Senator WEICKER. Let me set the record straight so we do not have to waltz around this.

I had opportunities to talk to this administration before it became the administration. I said at that time that I would expect to play, one of the prominent roles insofar as the policies of this agency were concerned should they become the administration. I certainly was not consulted. Bob Wicklund, who I think you all know, is very knowledgeable as a person in this area and was not consulted. Indeed we would search high and low as to what great expert of the oceans was manipulating all of this and there was not anybody. I do not accept budget officers at OMB as being the proper persons to dictate policy when it comes to this scientific agency. If I am wrong, I would be more delighted to be corrected. Indeed, so and so were pulled in, in place, to evaluate substance here to comport with this budget. But I understand exactly what you are telling me. What you are telling me is there are certain policy decisions in the broad sense.

Mr. WALSH. And decisions flowed from that.

Senator WEICKER. Once you are put in the box, usually your options become a little diluted, do they not?

Mr. WALSH. I would prefer not to comment on that question. [Laughter.]

Senator WEICKER. I mean my own feeling is, I know my friends that work with NOAA and I think all the wisdom emanates from the agency itself, that actually if I were restricting dollars, I think this is one of the most productive areas of the search. I do not denigrate the efforts of NOAA. As I said I am speaking to the entire agency. But there is nothing that I ever learned in my years of association with the agency that would indicate that this program has been anything but an unparalleled success. Let me tell you something, gentlemen, ladies, if you think private enterprise is going to pick up this ball and the States are going to pick it up, you are wrong. It is just not as simple as that. I do not think that the success has been achieved in this area which will now enable us to walk away from it. The matter of science as it relates to the ocean is going to get probably its greatest setback from the cutting of this program. I think there is hope. I understand the House is not throwing it out. Is that correct? And I intend to work with the Authorizing Committee here to try to keep this program in. I think it is a classic example of where a lack of expertise as to the substance can lead to a 100-percent wrong decision.

The next item I have is the Coastal Zone Management.

Somebody will have to refresh my memory on the Coastal Zone program. What is this intended to achieve?

COASTAL ZONE MANAGEMENT

Mr. WALSH. The Coastal Zone Management reduction, Mr. Chairman?

Senator WEICKER. As I say, just give me a two-sentence synopsis as to the substance of the program.

Mr. WALSH. The program that is being cut, the proposal is to eliminate the section 306 program administration grants that go to each State that has an approved Coastal Zone Management program for carrying out their program as identified in their plans, programs, laws, policies and the like. These funds are used for things like research, paying salaries of State employees who are involved in the permit processes, for example. It is basically a local planning administration kind of thing with a development of a plan. They are in the process of implementing that plan through decisions like permits in the coastal areas. It has been under way now for several years. What is being proposed is that the section 306 program administration grant now be eliminated on the same general policy lines as sea grant, that the States now have enough experience that they can begin to shoulder the burden themselves.

Senator WEICKER. I will ask my staff to see their great statement which justifies this question. Of the 25 States with approved coastal zone plans, it is estimated that only 5 States would be able to maintain those plans without Federal assistance. Please comment.

Mr. WALSH. We got that from the Coastal Zone Management office. The Office of Coastal Zone Management did a quick check on what they thought would happen should this be taken out of the program. I really cannot say anything about the veracity of the responses or whether this is truly accurate. It is hard to ask somebody that is going to lose money and expect them not to tell you they are not going to do something. But the calculation is that out of those 25, 15, about 60 percent, will maintain the program at some level. Five of those will do it in about the manner they are doing it now, but 10 will do it at a reduced level. However we expect that 10 States are likely to dismantle their agency and their effort.

Senator WEICKER. Senator Hollings—do you know Senator Hollings? [Laughter.] Senator Hollings has a series of questions that I will now submit for the record. However, he asks that two of them be orally posed.

Funding for State grants under the Coastal Zone Management program has been virtually eliminated under the proposed budget, on the basis that this is a State program and thus the States should fund it.

However, in reality this is a program which enables States to address a series of national interests as well. Deleting funding for the States does not change the legal requirement that these national interests be addressed by the States. How do you propose that this occur in the absence of some level of Federal support?

Mr. WALSH. It is believed that to the extent that the activities are continued by the States they will focus on the elements of their programs related to them as well as the national interest. The national interest you are talking about is the general goal of having better management in the coastal zone. To the extent that you have programs, the goal is achieved. In many States they have special protection kinds of programs to protect sensitive areas and one of the national goals is to develop a better process for things like facilities sites. Many States are going to continue to want to do that as well.

So to the extent the programs continue, many of the national goals which were very macrogoal, we think, will continue to be pursued, given that some will continue. In other places of course where they stop their programs, we believe that will be less than 40 percent of the case of the States, then it is likely that some of those goals may not be achieved but nonetheless overall we still have some hope of moving forward.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I will submit the rest of Senator Hollings' questions except for one.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Hollings

FY 1982 Budget Request

What portion of NOAA's revised request for 1982 is for oceans activities and how much is for weather activities?

1982 NOAA Budget Summary by Function

Oceans	$251,200,000
Weather	353,200,000
Satellite	125,500,000
Other	43,400,000
Total NOAA	$773,300,000

Legislative Authorizations

There are 20 pages of legislative authorizations for NOAA in the front of the justifications.

-- *Which of these authorizations are not funded in 1982?*

-- *Does the Department plan to propose that these authorizations be repealed?*

Many of the code citations listed are of a general authorizing nature and may or may not have funding in the FY 1982 submission specifically attributable to them. They are included in the list merely to show the broad range of activities which NOAA is authorized to do and may undertake in the course of its operation. Specifically, the code citations relating to the fishing grant programs are not funded in FY 1982 and include: 16 USC 757a,b,d(a); and 16 UCS 779a,b,d.

NOAA is not proposing repeal of any authorizations.

Sand Point

A rescission of $9,000,000 is proposed from NOAA's Construction appropriation to delete the Education Center from the Sand Point project.

-- *At one time we were told that the present Kansas City location of the Education Center was condemned; what are NOAA's plans for housing the Center?*

In the early 1970's, the National Weather Service Technical Training Center was located in Building #1 of the Complex at 601 Hardesty Street, Kansas City, Missouri. That building was declared unsafe and the Training Center moved to Building #9. In the mid 1970's, the entire complex of buildings was in a state of disrepair. This advanced stage of deteoriation threatened its useful economic life. The GSA and NOAA made many alternations, repairs, and major improvements to the buildings over the past few years. These improvements and major restoration projects made the building habitable.

NOAA's plan now is to remain at the Kansas City site and to continue the operation of the Training Center for the foreseeable future.

Sand Point

Late last year the Committee was informed that NOAA was taking over the Sand Point construction from GSA.

- *What parts of the project are now under construction?*
- *Has NOAA now decided not to co-locate the Pacific fleet at Sand Point?*
- *How much of the original project besides the Education Center will have to be eliminated in order to stay within the current appropriation?*

Project elements now under construction are the Operations Building, interiors, and site demolition. Bids have been opened and contracts will be awarded soon for Site Utilities and Pedestrian Bridges to the Operations Building. Construction of the Research II Building and the Shops Complex are currently in the bid process.

In January 1981 NOAA made the decision to delete construction of a permanent berthing facility at Sand Point and to instead construct a single pier for staging and operational activities. The Lake Union facility is to continue as the permanent home of the Seattle-based fleet. This decision was necessary to stay within the amount appropriated by Congress for the project. The project is presently within budget with a 10% contingency to cover unknowns.

The proposed $9 million rescission will eliminate the education center and a public reception and visitor information building.

P.L. 88-309

The Administration proposes to eliminate the Commercial Fisheries Research and Development Act grants to the states.

- *To what extent does the fishery conservation and management effort of the National Marine Fisheries Service depend on research done by the states with these grant funds?*

- *In what ways does this research contributs to Federal fishery management?*

Approximately 46 percent of the Grant-in-Aid for Fisheries Program funds (P.L. 88-309 and P.L. 89-304) for coastal States is used for projects related to Magnuson Fisheries Conservation and Management Act (MFCMA).

These projects generate data and management-related fisheries research used in developing fishery management plans. Statistics projects funded under the P.L. 88-309 program provide data to NMFS. Most of the P.L. 88-309 and P.L. 89-304 work generates multi-use data which supports MFCMA management efforts since many of the stocks migrate across Federal/State jurisdictions, and since all domestic marine fishery harvests are landed in State ports.

Observer Program

A critical factor in effective enforcement of catch limits set for foreign fishing vessels in the U.S. fishery zone is the presence of American observers on each vessel in the zone. In the past the National Marine Fisheries Service has been unable to provide more than 20 percent observer coverage of the foreign fleet fishing off the U.S. coast. To rectify this deficiency the Congress last year commanded NMFS to put an observer on virtually every foreign vessel and to charge the foreign fishermen for the costs of this full observer coverage program.

-- *What progress is being made in effecting full observer coverage on foreign vessels?*

-- *How will the personnel reductions proposed under the Administration budget affect fisheries enforcement?*

A full evaluation of the existing fisheries observer program is being completed. This evaluation will be used to propose an efficient management structure for this significantly expanded program. Policy issues such as the health and safety standards for foreign vessels, mothership fleet coverage, vessels remaining in the Fisheries Conservation Zone (FCZ) for a short period of time, and billing and collection procedures are being resolved.

Eleven positions in the Central Office enforcement division are to be eliminated. Central Office support for regional enforcement programs and liaison with other Federal enforcement agencies will be reduced. This will also reduce the administrative costs of this program and is consistent with the Administration's policy of improving the productivity of programs. We anticipate that the transfer of essential functions to the regional level will enhance the role of the Regional Director as the principal resource manager without derogation of enforcement programs. In addition, we expect enforcement methodologies to become more cost-efficient and less in need of Central Office support.

Fisheries Development

A keystone of fisheries development, and particularly of the recent American Fisheries Promotion Act is the program of industry-initiated grants for development efforts in all phases of the fishing industry. Why is the Administration intent on eliminating this program when the people who are in the fishing business would appear to be best situated to pinpoint fishery development needs?

Although the industry is in the best position to pinpoint fishery development needs, the Administration believes that the Federal government should not subsidize the development of the U.S. fishing industry through the Saltonstall-Kennedy grant program. The fishing industry will develop when the economic opportunity exists.

Foreign Fishing Fees

The American Fisheries Promotion Act, which became law at the end of 1980, requires a revised system for setting fishing fees which must be paid by foreign fishermen who wish to catch fish within our 200-mile zone. This new system is to generate a sustantial increase in the total sum collected each year for the foreign catch off our shores. How much money in foreign fees do you expect to collect in 1981, and what progress are you making in devising the permanent fee schedule required under the Act?

A total of approximately $24 million in foreign fishing fees is projected for FY 1981. A new schedule for 1981 has been prepared and is being implemented to meet the requirements of the "interim fees" provision of the Act. A permanent fee schedule for 1982 and beyond is being developed. A special study to identify all U.S. costs incurred by conservation and management activities under MFCMA and to recommend a reasonable method for apportioning the costs attributable to the foreign harvest among the foreign fishing nations is presently being conducted. We will implement such a schedule by January 1, 1982, as required by the Act.

Marine Pollution

NOAA has requested reduced funding for pollution monitoring and research in Puget Sound and the New York Bight.

-- *Please explain why these activities can be phased down "without major adverse consequences" as stated in NOAA's budget submission (NOAA-103)?*

-- *Has monitoring to date shown that pollution in these areas is not a serious problem?*

The Puget Sound and New York Bight Marine Ecosystems Analysis (MESA) projects were never intended as continuing research projects. Initial data gathering efforts for both MESA projects have been completed and the projects are entering data analyses modes.

The reduction of $200,000 is made possible because: (1) the Puget Sound Project is using data and information on pollutant sources developed by other agencies; and (2) the work on pollutant fluxes (transport) is ahead of schedule. In Commencement Bay, EPA has underway a program to characterize pollution sources and in Elliott Bay, Seattle METRO is initiating the same type of investigation. Information from these studies is being made available to the Puget Sound Project.

The investigation of fluxes (transport of pollutants) is essentially complete and results are undergoing evaluation; results may indicate that additional work on fluxes will not be necessary.

The New York Bight Project terminates in FY 81. The Hudson-Raritan Estuary Project, which has been in a start-up mode since FY 80 using $500,000 of reprogrammed New York Bight Project funds, will shift to a research phase in FY 82. With the decrease the planned funding level for the Hudson-Raritan Estuary Project is planned at $1,200,000 beginning in FY 82.

A reduction of $150,000 resulted from the decision to close the Instrumentation Support Facility in Brooklyn and to forego the use of the NOAA Launch Johnson. Vessel support for the Hudson-Raritan Estuary Project will be provided under contract.

Funds available for research contracts will be reduced from $870,000 to $770,000 for an additional savings of $100,000. The basic project objectives will be met at the proposed reduced funding level.

The New York Bight Project has clearly established that the waters of the Bight are heavily polluted. Although field work of the Project terminated in FY 80, NOAA initiated the Northeast Monitoring Program in that year, which includes some sampling stations in the Bight. This monitoring program will allow NOAA to detect any changes that may occur in the condition of the Bight.

The Puget Sound Project has identified certain areas of the Sound that are showing the effects of pollution.

Marine Pollution

Because numerous Federal agencies operated uncoordinated and possibly duplicative ocean pollution programs, Congress enacted the National Ocean Pollution Research and Development and Monitoring Planning Act of 1978. The act required NOAA to (1) develop a 5-year plan to coordinate and direct Federal ocean pollution activities, and (2) establish a "comprehensive, coordinated, and effective ocean pollution research and development and monitoring program.

- *How has the management of Federal ocean pollution activities improved since the act's passage?*
- *In particular, would you identify duplicative activities which have been eliminated, Federal ocean pollution programs that are now better coordinated, and programs whose direction changed because of the 5-year plan?*
- *What has NOAA done to establish the "comprehensive, coordinated, and effective" program called for in the act?*

Following passage of the National Ocean Pollution Planning Act in 1978, a policy level interagency committee chaired by the NOAA Deputy Administrator was established under the Federal Coordinating Council for Science, Engineering, and Technology and the first 5-year Federal Plan was published in the fall of 1979. The thrust of the first Plan was to describe continuing marine pollution research activities in eleven Federal agencies and Departments and evaluate the overall emphasis of the effort in relation to major information needs and priorities. While the plan provides general guidance for improved program management and direction, the interagency

coordination process used to produce the plan is of equal or greater importance in identifying gaps, avoiding duplication, and improving program efficiency on a continuing basis. Specific examples of program management improvements since passage of the act are:

- Consolidation within NOAA of major marine pollution research activities within the Office of Marine Pollution Assessment under the Assistant Administrator for Research and Development.

- Substantial increase in the information flow among policy officials and program managers on Federal and non-Federal development, and monitoring activities. This has been promoted by several aspects of the planning process including development and publication of agency program summaries, creation of a computer accessible inventory of Federal ocean pollution projects, preparation of an inventory of non-Federal projects, and planning meetings at both the policy and program management levels.

- The development of individual agency five-year plans which identify for each agency (1) goals and objectives, (2) milestones of accomplishments for the next 5 years including anticipated changes in program direction and new starts, and (3) five-year budget and resource estimates. Most agencies do not internally organize their programs in terms of marine pollution. Following a recommendation of the first Federal pollution plan, all agencies are developing internal five-year strategic planning documents that should not only greatly improve internal program management but also allow the second Federal plan to be more effective in strategic planning and coordination across the Federal Government.

- The Federal plan and the interagency planning process has established a framework for accountability in terms of a common set of marine pollution problems and information needs with which agency officials, OMB, Congress, and the public can relate individual agency program efforts. This accountability has forced program managers to justify the rationale for a proposed research, development, or monitoring activity in the context of overall national priorities.

Duplication of activities between ongoing programs does not appear to be a significant problem at this time. More significant problems which the second Federal plan is seeking to address are (1) balance of the overall Federal research effort in relation to national needs and priorities, (2) conduct of relatively low priority studies at the expense of high priority unmet needs, and (3) coordination at the regional and national level of programs that are studying similar problems or working in the same geographical area to improve overall program effectiveness and efficiency. Specific examples of the impact of the first 5-year plan are:

- Research on pollution from petroleum production and spills constituted over one-third of the total Federal program in FY 1978. An extensive review of this sector of the Federal program has just been completed by an outside panel of experts to determine, in part, the usefulness of results in making

better decisions on Outer Continental Shelf (OCS) leasing and post-lease management. In addition to specific critiques of individual program elements, a change is recommended in the general direction of the Federal effort from descriptive surveys and baseline studies to studies that focus more directly on the effects of petroleum on the most sensitive marine organisms and habitats at risk.

- The first 5-year plan made specific recommendations to develop a coordinated marine pollution monitoring program. NOAA and EPA have jointly conducted a series of regional workshops to identify regional needs for ocean pollution monitoring and are working closely together to develop and implement a coordinated strategy for cooperative efforts at the Federal, state, and local level in data collection, analysis, and dissemination.

- A major gap in the overall Federal effort identified in the first 5-year Federal plan was the need for information on the sources, fates, and effects of non-point source pollution in coastal and estuarine areas. As a result, a strategic assessment of coastal areas has been initiated by NOAA. An assessment of the Atlantic Coast has been completed and work on the Gulf Coast is underway.

- Among the low priority research needs identified in the first Federal plan were those related to the pollution effects of developmental ocean energy technologies such as kelp biomass production, wave and current power systems, and the transmission of solar energy from satellites to ocean-based receiving stations. A low priority was given to research over the next 5-years on potential pollution effects from these activities because such systems will not be a significant energy source or environmental issue in the near term. These conclusions have been used to eliminate programs in at least one agency.

Activities and accomplishments since enactment of P.L. 95-273 in establishing within NOAA a comprehensive, coordinated, and effective ocean pollution program include the following:

- Completion in 1979 of a one-year study and analysis of NOAA's pollution programs carried out in-house by staffers from the offices of Research and Development, Fisheries, and Oceanic and Atmospheric Services. The product was a report that makes recommendations to NOAA management on programmatic and organizational changes needed in order to achieve the purposes of Section 5 of the Act.

- A Board of Directors for NOAA's marine pollution programs was established, comprised of the Assistant Administrators for Research and Development, Fisheries, Oceanic and Atmospheric Services, and Coastal Zone Management. The purpose of this Board is to ensure cooperation among those major components of NOAA that carry out marine pollution programs and activities and to provide policy-level guidance. The Board is chaired by the Assistant Administrator for Research and Development.

Marine pollution budget initiatives of the agency are reviewed by the Board and a unified budget package of initiatives is presented each year by the Assistant Administrator for Research and Development.

- The Office of Marine Pollution Assessment (OMPA) was established in 1978 under the Office of Research and Development. This new office has been assigned management responsibility for all marine pollution programs within the Office of Research and Development. In addition, it is charged with coordinating all of NOAA's ocean pollution programs and activities. OMPA also takes the lead in planning activities related to the Section 5 mandate.

- An intra-NOAA group is now working on a NOAA planning document which is to serve as the framework for the comprehensive, coordinated, and effective program required by Section 5 of the Act.

Coastal Wave Monitoring

NOAA has requested reduced funding for its coastal wave monitoring program (NOAA-63). The Committee understands that this cutback will prevent the deployment of $400,000 worth of wave sensing buoys NOAA recently purchased.

-- What are NOAA's plans for this program?

-- Do you intend to proceed with the development of this program?

NOAA will continue the Coastal Waves Program at a reduced level. NOAA will continue current deployment of wave buoys on the east coast. The data acquired from this network will be used for systems evaluation and the analysis of long-term wave statistics. We also plan to utilize wave sensing buoys on the west coast (Columbia River) in conjunction with circulatory surveys.
The New York Bight Project has clearly established that the waters of the Bight are heavily polluted. Although field work of the Project terminated in FY 80, NOAA initiated in that year the Northeast Monitoring Program, which includes some sampling stations in the Bight. This monitoring program will allow NOAA to detect any changes that may occur in the condition of the Bight.

NOAA Fleet

NOAA plans to deactivate three ships (NOAA-70). NOAA indicates that the "Surveyor" is presently engaged in support of the Department of the Interior's Outer Continental Shelf Environmental Assessment Program and that the Interior will contract for its ship support service needs from other sources.

-- Will there be any anticipated adverse affects on Interior's activities or other activities as a result of the Surveyor's deactivation?

-- What research or other activities will be eliminated or cutback by the deactivation of the "Oceanographer" and "George B. Kelez"?

SURVEYOR and DISCOVERER have previously provided most of the ship time for OCSEAP, while OCEANOGRAPHER supported other NOAA research programs. With the deactivation of two of these three ships, the remaining west coast Class I, DISCOVERER, will be used to cover a mix of OCSEAP and in-house NOAA R&D Programs. Consolidation of these requirements will lead to a cut-back in OCSEAP (to be supplemented by DOI's chartering of other vessels), Ocean Climate Studies (National Climate Program), studies of slope stability related to drilling hazards, development work on a new sonar system for deep sea mapping and other NOAA physical and chemical oceanography research programs.

The GEORGE B. KELEZ supports the Ocean and Coastal Mapping, Investigations and Services Program and is currently the only NOAA vessel specifically devoted to coastal oceanography. Deactivation of KELEZ will eliminate 180 days at sea annual support of programs in ocean pollution monitoring, ocean dumping and marine ecosystems on the east coast of the U.S.. Ships which normally conduct nautical charting and fisheries research will be used to support a reduced level of effort in these programs.

Ship Rehabilitation Program

NOAA proposed to augment its ship rehabilitation program. At the rate NOAA is taking ships out of service, doesn't it appear unwise to rehabilitate ships that may well be headed for deactivation?

The Midlife Rehabilitation and Upgrade of NOAA Vessels Program provides for a midlife rehabilitation of NOAA's vessels to prolong the ships' usefulness for up to 10 years beyond their expected lifetime of 25 years. The loss of the OCEANOGRAPHER, SURVEYOR, and KELEZ in FY 1982 places a much higher priority on proceeding with the fully funded program immediately. We do not plan to lay up any vessels scheduled for rehabilitation.

Fishery Conservation and Management Act

GAO has pointed out in a number of reports that fishery "resource assessment" is a basic problem in developing appropriate fishery management plans under the provisions of the Fishery Conservation and Management Act.

-- What kind of progress has been made in this area?

-- With the loss of three National Ocean Survey vessels due to planned budgetary cuts, will this have a serious impact on the time table for developing the remaining plans?

The Marine Resources Monitoring, Assessment and Prediction Program (MARMAP) is a data collection, technology development, and data analysis program that provides information on the abundance, composition, location, and condition of marine fishery resources of interest to the United States. The program serves a multiple clientele, including Federal fishery managers and Regional Fishery Management Councils. It also serves State managers, Federal and State fisheries development agencies, fishery development foundations, the oil and gas industry, habitat managers, fishermen, fish processors, and the academic community.

NMFS assembled an in-house task force to address resource assessment activities. A final draft of the task force report is now prepared. This report addresses stock assessment methods, the adequacy of the technology, and provides recommendations for future action.

The layup of three NOAA fleet ships will have a minor indirect impact on NMFS resource assessment activities. MARMAP Survey I (icthyoplankton) will be reduced about five percent and groundfish assessment in the Gulf of Alaska and the Bering Sea will be reduced by the same amount

Marine Sanctuaries

NOAA has been criticized in the past for not consulting and coordinating sufficiently with concerned Federal, state and local agencies in considering and designative ocean areas as marine sanctuaries and in developing regulations to control activities permitted in sanctuaries. What has NOAA done to improve its consultation and coordination procedures?

We are not certain where this criticism has come from, but from the amount of time that was taken to fully develop the four most recently designated sanctuaries, it is appropriate to say that adequate consultation and coordination with concerned Federal, state and local agencies has occurred.

As noted in separate questions, NOAA proposes to eliminate the present List of Recommended Areas and initiate a new selection process involving regional resource evaluation teams. Consultation will be provided throughout this process.

Before selecting any site for further evaluation as an active candidate, NOAA will seek preliminary consultation with the public and Government agencies to obtain information on the site and activities within the area (existing and proposed), how the site meets the selection criteria, and recommended management framework. Local, state, national and where appropriate international input is sought. To aid in this process, NOAA will prepare a written evaluation of the site and how it meets the selection criteria; this evaluation is provided to the public for review. Based on the results of preliminary consultation, NOAA determines whether to select the site as an active candidate and thus proceed with a particular sanctuary. Notice of this determination is published in the Federal Register. If a decision is made not to proceed, reasons are specified in the notice. If a decision is made to proceed, the preparation of a draft environmental impact statement (DEIS) begins and notice of intent to publish a DEIS is published in the Federal Register.

The DEIS discusses in detail the existing resources within the area, existing and potential activities, a comprehensive management scheme, and the environmental consequences of alternative boundaries and management measures, including any necessary regulations. Consultation with the public and Government agencies is sought throughout the development process. As part of the DEIS process, a regional scoping meeting will be held in the area near the proposed site to solicit public and Government input on the significant issues related to the proposed action. Scoping meetings are held with Federal agencies to solicit their views, as required by NEPA regulations. When appropriate, NOAA provides funds to eligible parties to ensure their participation in the EIS process, particularly in the public hearings.

When the DEIS is completed, notice of its availability is published in the Federal Register. The notice includes the full text of the proposed Designation Document and draft Management Plan. No sooner than 30 days after the availability notice appears in the Federal Register, a formal public hearing is to be held in an area near the nominated site. The public hearing provides a forum in which all interested parties can present their views on the adequacy of the DEIS, the proposed Management Plan, and any necessary regulations, and the desirability of creating a national marine sanctuary. Written comments on the DEIS are accepted for 60 days from the date of the notice. After the close of the comment period, a final environmental impact statement (FEIS) is prepared, and distributed for final comment. Specifically, final consultation is sought with the Departments of State, Defense, the Interior, Transportation, the Environmental Protection Agency, and the heads of other interested Federal agencies. If the proposed sanctuary includes waters lying within the territorial limits of any State, officials of the State are consulted.

After the consultation on the FEIS, the Secretary of Commerce, upon approval of the President, designates the area as a national marine sanctuary. The designation becomes effective unless: (1) within 60 days of publication of the designation in the Federal Register, the Governor of any State with waters lying in the sanctuary certifies that the designation on any of its terms is unacceptable or (2) both Houses of Congress adopt a Concurrent Resolution within the first 60 calendar days of continuous session after publication of the designation that disproves the designation of any of its terms.

MARINE SANCTUARIES

The open-ended nomination process for marine sanctuaries permits nomination of virtually any body of water, no matter what unique features may exist. What is being done to provide more focus on the more unique marine areas which have real potential for becoming "active candidates" in the process?

The National Marine Sanctuary Program is proposing to eliminate the present List of Recommended Areas (LRA) and establish a clearer procedure including more precise criteria for selecting areas and choosing Active Candidates for ultimate designation consideration.

The LRA is a list of all recommended sites which have met minimal screening criteria. Under our present regulations, listing on the LRA is a prerequisite for sanctuary designation but does not imply that designation will ever occur.

The LRA was established as a means of advising the public at large of what sites had been recommended, and of soliciting information on those sites. Nevertheless, since its inception the LRA has caused substantial confusion and concern over the status of areas on the list, the likelihood of further action on the sites, and the overall emphasis of the program. Even though the vast majority of the listed areas will never become active candidates, the LRA is often perceived as the blueprint for the sanctuary program. This led to concern over the future size of the program, particularly since recommendations are placed on the LRA as submitted to NOAA--in some instances sites on the list cover thousands of square nautical miles of Outer Continental Shelf waters.

The LRA has resulted in unnecessary controversy and has left an open door for nominations which, although marginally acceptable, are on balance inappropriate for further consideration. Accordingly, we are proposing to eliminate the LRA.

We are proposing to initiate a rigorous procedure for the identification of sites suitable for active candidacy using regional resource teams. By actively seeking appropriate sites based upon sound resource data and early public input through a network of regional resource evaluation teams, we will eliminate unrealistic nominations and those which fail to advance the goals of the marine sanctuary program.

We are proposing to provide the regional resource evaluation teams with clear site selection criteria that will assure that rigorous analysis results in recommendation of only those sites with exceptional resource values. This process will assure that the pool of sites we have to work with is composed only of high quality areas with a good chance of designation.

Marine Sanctuaries

Recognizing that some types of sanctuary regulations may be more difficult to enforce than others, particularly in large sanctuaries:

-- *What arrangements has NOAA made or planned to ensure that sufficient surveillance and enforcement controls are or will be established?*

-- *What has been NOAA's experience on public compliance with sanctuary regulations?*

As part of the surveillance and enforcement section of each site specific Sanctuary Management Plan, NOAA will discuss the various management arrangements designed to ensure adequate surveillance and enforcement activities for each designated sanctuary. Such activities are designed on a site-specific basis. In Federal waters, the U.S. Coast Guard (USCG) is the primary enforcement agency and, depending upon the need at any given site, the USCG will enforce sanctuary regulations as a part of their routine

surveillance activities. In sites where more intensive attention is required, NOAA will financially assist the USCG or other enforcement agencies to ensure an on-site presence. In sanctuaries involving State waters, State enforcement agencies will be asked to assume this responsibility, with NOAA providing funding assistance as necessary.

All activities in the sanctuary, including activities subject to existing authorities which may affect the sanctuary are monitored over time for several reasons: (1) to ensure they are consistent with sanctuary purposes; (2) to assess potential impacts on sanctuary resurces; and (3) to ensure that the existing management/regulatory system adequately protects the resources. If monitoring/surveillance efforts indicate that an existing or proposed activity is inconsistent with sanctuary purposes, or that an existing authority is not adequately protecting the resources, other options are available. The first option is to consult with the appropriate agencies to urge them to increase resource protection or develop mitigation measures. If this agency self-enforcement option fails, other options, including sanctuary regulation of the activity, can be employed to ensure the resources are protected.

The Key Largo National Marine Sanctuary is the only sanctuary where data on enforcement is presently available. The sanctuary receives approximately 400,000 visitors annually; public compliance has been quite good. Generally about 40 citations are issued each year in the sancturary most of which are for taking coral. Data on the other sanctuaries will be developed overtime as they are implemented.

MARINE SANCTUARIES

Sanctuary regulations and enforcement activities are subject to international law constraints. What actions, if any, has NOAA taken to address these limitations?

Several mechanisms are available to address this limitation should it be important in particular cases. In particular, Section 302(c) of the Marine Protection, Research and Sanctuaries Act expressly provides for the Secretary of State to negotiate agreements with foreign governments where international protection is appropriate. In addition, existing international mechanisms can provide needed complementary protection for marine sanctuary sites. Approval of the Intergovernmental Maritime Consultative Organization (IMCO), for example, can be sought for considering the sanctuary an "area to be avoided" by international shipping under its Resolution A.378(x). We therefore do not believe that international law undercuts the utility of the marine sanctuaries program. Indeed, the marine sanctuaries program fits very well with growing international interest in programs designed to protect marine resources. NOAA has cooperated with several other countries with interest in or established programs similar to the marine sanctuaries program. We expect to continue to work with other Nations on protection and management of special marine areas.

Sea Grant

GAO reviewed the Sea Grant program in 1979 and reported that Sea Grant projects appeared to have limited application and research results were of little use to the "identified user community." Also, project results had not been communicated or disseminated to parties outside the Sea Grant institutions. What has NOAA done to ensure that Sea Grant projects address the day-to-day problems and needs of the marine community and meet the expected goals and objectives of the program?

The GAO did not conduct a formal review of the Sea Grant Program in 1979, but did what they termed a preliminary scoping study to determine if a review was warranted. NOAA replied to the findings of this study with clarification on several points that we believe were misunderstood or misinterpreted, and an indication that we were working with the Directors of the Sea Grant programs to address the findings contained in the GAO letter. In addition, the Office of Sea Grant instituted a new review process in which each project is evaluated on 3 specific criteria following peer and site reviews. One of these criteria is entitled "Utilization" and is a measure of user needs awareness on the part of the proposer and/or user participation in the project. Also, the Office of Sea Grant is ensuring that a follow-up evaluation system that has been in place since 1973 to evaluate completed projects is followed. We believe that these actions meet the needs identified in the GAO letter and since we have not heard from the GAO since we replied to their letter, we assume that they agree.

Utilization Laboratory

What is the impact of the 1982 program reductions on the Southeast Utilization Laboratory at Charleston, South Carolina?

Reduction of the aquaculture nutrition program at the Southeast Utilization Laboratory at Charleston, South Carolina, will result in the loss of four scientists and $131,500 of programmatic funds. Studies to determine the nutritional requirements of cultured crustaceans will be terminated.

Landsat

NOAA has cancelled plans to begin the development of an operational land remote sensing satellite system. NOAA's budget (NOAA-154) states that between 1983 and 1985 "the Federal government will assess its future needs for land resource remote satellite sensing and will be working towards private sector development, ownership and operation of such a system."

-- When will it be necessary for private industry to start developing an operational LANDSAT system in order to have the system up when the LANDSAT-D systems expire and to ensure an uninterrupted flow of data?

-- *"The Transition Plan for Civil Operational Land Remote Sensing From Space" issued by NOAA in June 1980, says that an operational LANDSAT probably would not be self financing before the end of the century. In view of this, does NOAA have any expectation that private industry will take on LANDSAT operation in the near future?*

NOAA has not cancelled its plans for an operational Landsat system. Rather, as stated above, it will proceed with the operation of the Landsat D system in 1983 as planned. Additional satellites beyond Landsat D and D', as well as any ground system upgrades, will depend on the private sector's willingness to invest in the system.

Based on our discussion with potential private system owners, we believe that it would be necessary for private industry to start developing the successor to the operational Landsat system in 1984 if satellites are to be available in 1988, the anticipated duration of Landsat D and D'. If a launch failure of Landsat D or D', or a premature failure in orbit is experienced, there would be a gap in data during the mid 1980s unless the private sector starts to develop the successor system prior to 1984.

Two companies have expressed some interest in investing in this system at this time. Other companies have expressed interest, but at some unspecified date in the future. The terms upon which any such investment might be made are not now clear. We believe the government must be authorized to enter into a formal process of soliciting proposals in order to determine the readiness of the private sector to invest in this system.

Weather Station Closures

NOAA plans to close thirty-eight part-time Weather Service Offices and to convert eight Weather Service Forecast Offices to WSO status (NOAA-184). What impact will this have on the weather forecasts and warning services normally provided for aviation and agricultural use in those areas?

Four Weather Service Offices (WSO's), Klamath Falls, OR; Walla Walla, WA; and Bakersfield and Santa Maria, CA, provide adaptive agricultural forecasts. Zone forecasts, containing generalized area-type weather forecasts, are the basis for the adaptive forecasts made by the WSO's and will continue to be issued by the National Weather Service. These zone forecasts are used by the agricultural industry in most parts of the country now.

Weather observations from the WSO's will continue to be available to aviation users if suitable local arrangements for continuing the

program can be made at no expense to the National Weather Service. Pilot briefing services, in general, are now carried out by the nearest Federal Aviation Administration Flight Service Station.

The aviation and agricultural responsibilities of the eight Weather Service Forecast Offices (WSFO's) will be continued for the affected area by shifting the program responsibility for providing these services to adjacent full-service WSFO's.

Weather Station Closures

Which of the 38 WSOS were included in previous efforts to close these offices?

Seventeen of the 38 WSO's have been part of previous budgetary station closure proposals. The offices and years proposed for closing are:

--Unalakleet, AK (FY 80)
--Mt. Shasta, CA (FY 80)
--Stockton, CA (FY 80)
--Ft. Meyers, FL (FY 79, 80)
--Rome, GA (FY 79, 80)
--Alexandria, LA (FY 80)
--Valentine, NB (FY 79, 80)
--Elko, NV (FY 79, 80)
--Trenton, NJ (FY 79, 80)
--Clayton, NM (FY 79, 80)
--Roswell, NM (FY 79, 80)
--Mansfield, OH (FY 79, 80)
--Burns, OR (FY 79, 80)
--Milford, VT (FY 79, 80)
--Lynchburg, VA (FY 79, 80)
--La Crosse, WI (FY 79, 80)
--Parkersburg, WV (FY 79, 80)

Weather Station Closures

Can NOAA or other Federal agencies absorb the employees displaced by the closing of these offices?

The National Weather Service has already developed internal mechanisms to offer the potentially impacted employees comparable positions, as they become available, elsewhere in the Agency. We are unable, at this time, to predict the exact number of employees that can be absorbed. However, normal attrition over the next few months and judicious use of offers to affected employees should enable the National Weather Service to absorb a large number of these employees.

Weather Station Closures

Is the closing of the 38 WSOS all that is contemplated, or are further closures contemplated?

Only the 38 part-time WSO's are being proposed for closure in FY 82. However, future year restructuring or reorganizations, budget considerations, or personnel constraints may lead NOAA to consider additional closures.

Aviation Area Forecasting

What will the actual impacts be to general aviation of the termination of the Aviation Area Forecasting program?

The Aviation Area Forecasts (FA's) now issued by 12 WSFO's are primarily used by pilot briefers as a pre-flight briefing tool. The FA's will be replaced by a more generalized aviation area forecast prepared at a centralized location using new technological capabilities to produce an automated aviation area forecast. This new product will be made available for use in flight planning and is expected to meet minimal pre-flight briefing requirements of identifying significant in-flight weather that would impact flight route decisions.

Personnel Reduction

In regard to the effect of personnel reductions on areas within NOAA not specifically discussed above, how will these reductions affect the fulfillment of other legal obligations established by statute, as well as other activities within NOAA?

NOAA does not anticipate abdicating any of its responsibilities or other legal obligations established by statute as a result of personnel reductions.

Snow Surveys

Senator Andrews has written me of his interest in the National Weather Service project to develop and implement Airborne Gamma Radiation Snow Surveys.

-- What have been the results of this program?
-- What is planned in the 1982 budget for this program?

The technique permits rapid measurements of the snow water equivalent over large areas with a low-flying aircraft. In 1978, NOAA began full operation of this program in the upper Midwest. These flights take place in areas of North Dakota, South Dakota, and Minnesota, where snowmelt flood threat generally exists each spring. These data are reported to National Weather Service River Forecast Centers in Minneapolis and Kansas City and used in the Spring Flood Outlooks issued to the public. Information gathered in this way has helped the National Weather Service alert communities 3 to 6 weeks in advance of potentially hazardous flooding.

In addition, NOAA has recently developed techniques using this system to measure soil moisture. This year NOAA conducted flights to make soil moisture measurement over the dry areas in the Midwest to better assess the severity of the drought. High quality data are obtained.

In FY 1982 NOAA plans to continue operations at the same level as FY 1981 in the States of North and South Dakota and Minnesota.

SPENDING ALL PROGRAM MONEY

Senator WEICKER. The authorization for sea grant states that "The Secretary shall maintain, within the administration, a program to be known as the national sea grant college program * * *". Does the Department believe they can eliminate sea grant without repealing the authorization in view of the mandatory nature of the authorization?

Mr. WALSH. I heard that question last night and I am just not prepared to give you a final legal decision as to what is mandatory and what is not. I really can't respond. I would like to respond for the record on that one, if I could. It makes, in essence, the argument that every statute that is enacted with the term "shall" in it requires the Federal Government under obligation to spend money in all of those program areas. Of course, as you know, that isn't done.

In the last analysis, it is the appropriation acts that determine which programs get funded and which ones do not.

To the extent you have mandatory programs, that is, you must spend money in an area, I don't know. That is a legal question. My off-the-cuff reaction is if the Federal Government has to spend money in every area that says "shall," our budget would be $3 trillion.

Senator WEICKER. Warren Kane, Senator Hollings' able assistant here over the years, says that of course that will be sunsetting through the budget rather than through legislation. And, of course, Brother Kane is right. But then Senator Hollings is doing this all over the place.

[Laughter.]

Mr. WALSH. I think that raises a much larger question which the Administrator of NOAA is really not qualified to answer.

Senator WEICKER. On the coastal energy impact fund, I don't have any problems with letting that go. I feel it was a waste of money to begin with. State anadromous grants?

FISHERY GRANTS

Mr. WALSH. Yes, sir, there are two categories in the State fisheries grants. One is the anadromous fishery grant program that is parceled out to individual States throughout the country on a formula basis. We do it in collaboration with the Department of the Interior. There are $2 million involved. We are here again identifying a program that is State-related. In fact, under some of these programs we actually pay salaries to the State employees, but in this case we are improving production techniques, construction, and the like. That program is to be zeroed out. And the States involved would have to pick it up themselves.

A similar program is involved under the Commercial Fisheries R. & D. Act. The tabulation is made on the basis of how many fish landings there are in a particular State, they get allocated the money that is available. Five million dollars is available as a base. We have a breakdown.

Senator WEICKER. Do you have a breakdown of the State anadromous fish grants?

Mr. WALSH. Yes; Connecticut got $26,000 in 1980.

Senator WEICKER. What are these grants specifically used for?

Mr. WALSH. They are used for various kinds of activities to conduct research about anadromous fish. In some cases they are actually used to build hatcheries, streams, or the like. It is an augmentation in most cases of an ongoing State program where the Federal Government, through the anadromous fish program. For several years now there has been a long-standing program, which has provided assistance on a formula grant basis, the same in the commercial fishery R. & D. area.

As I said, in some cases we actually paid the salary of the State employees and in our adjustments-to-base when their salary goes up, we put it in the adjustment-to-base. The theory is, these are primary State interests and that States at this point have the interest to continue.

Senator WEICKER. I will not accept that proposition when it comes to the ocean. I am not saying there aren't activities that can clearly be identified with the State. How do you go ahead and identify the ocean with a particular State? How do you do it?

I understand we are talking about building a dock facility. That is OK.

Mr. WALSH. Paying a hatchery employee from Washington.

Senator WEICKER. Although that again gets into a gray area, because that is only a part of the chain, if you will, as to what occurs in a hatchery, as to what happens to the fishing hatchery.

I don't see how you can identify this as being purely in the interest of the State.

Mr. WALSH. The argument here is, for example, take the State of Washington, that I am most familiar with. There is a $60 million run on fish every year and the Federal Government has invested very large sums in protecting that line of fish. The question then is whether the Federal Government should continue to support that if the value of the species is such that the State could pick it up. That is the argument.

Senator WEICKER. The staff points out to me, and they are correct, the very program that you are talking about here, the anadromous fish, by their very nature are migratory. They are migratory. Those salmon in Washington, Oregon, Alaska, they are all over the world, I would guess. I am not talking about what happens when they go up the river. I don't understand.

Mr. WALSH. Most of the catch does take place in the territorial sea.

Senator WEICKER. I know that. I am not arguing where the catch takes place. A lot goes on in this whole process that does not take place in the territorial sea.

Mr. WALSH. We still are maintaining work on these areas. We still have to understand that. We have our basic MARMAP program in which we assess the availability of all stocks that are caught.

We have the 1981 rescission with regard to MARMAP, but the program remains at about the same level as we have had in the past. The MARMAP program is still a sizable program, about $30 million for assessing all stocks. We still have the habitat program, and we are doing research in these areas.

What is being pinpointed for reduction are those areas where we pass the Federal funds to the States to do their thing. It is not like we are eliminating everything we are doing on the ocean.

Senator WEICKER. The problem with that argument is that I would go along with that if there were increases as to whether NOAA is going to go ahead. If you are going to cut loose and let the States do their thing, fine, but there is no compensatory additional funding at the Federal level.

Mr. WALSH. I think it is fair to say that many of the things in this area probably should have a thorough review. You take the MARMAP program, in theory you could study every critter out there, every stock of fish, not all of those stocks of fish are going to be regulated or is there any great interest in fishing on them. So you have to somehow adjust the program to those which have the biggest commercial or recreational interest, focus on those, understand the stock and protect the habitat or do whatever you need to do to continue the availability.

FISH TRADE

Senator WEICKER. Fish trade?

Mr. WALSH. Yes, sir. We had an item that was submitted in the Carter budget for $1.1 million for some increased activities in regard to fish trade.

Senator WEICKER. What do you mean by "fish trade?"

Mr. WALSH. It is a little bit confusing. Basically it is related to expanded activities overseas to increase interest in buying our fish products. We still have a sizable program in that area.

Senator WEICKER. We have got to increase interest here at home in buying the kinds of fish the people don't normally eat.

Mr. WALSH. That is correct.

I would say one thing, that Secretary Baldrige met with Foreign Minister Ito just the other day on automobiles and fish. I am proud to say they spoke most of the time about fish.

Senator WEICKER. We are not going to trade fish for cars yet. [Laughter.]

Mr. WALSH. I think they were a little taken aback, as a matter of fact.

Senator WEICKER. Is the Japanese model fish better than our model fish?

Mr. WALSH. Absolutely not. Our salmon are the best in the world and they had better buy more of them.

Senator WEICKER. Are those salmon known to swim in Japanese waters and then come back here to the United States?

Mr. WALSH. No; but they swim around in Russian waters and on the high seas where the Japanese catch some of them.

AQUACULTURE

Senator WEICKER. The aquaculture?

Mr. WALSH. Yes, sir. The proposal here is to reduce by about one-third the aquaculture programs and to eliminate nonsalmon aquaculture research. The rationale in this situation is that nonsalmon species, things like clams, oysters, scallops, and shrimp are high-value fishery resources. Because of their high value and their known desirability, particularly in the restaurant trade, private industry will continue this research.

Senator WEICKER. The private industry is going to do it? I wonder if

private industry knows just how much it is going to be doing in the next decade. [Laughter.]

Senator WEICKER. I will tell you, it is enormous.

Mr. WALSH. If we get some oil companies to start buying aquaculture activities maybe we will do all right.

Senator WEICKER. You know just as well as I do that it is true that the high end of the spectrum, the cost spectrum, this has a great appeal, you know that nobody has succeeded or succeeded only to a limited extent.

Mr. WALSH. There are some successes.

Senator WEICKER. There are some successes.

Mr. WALSH. Coca-Cola is doing very well with their corporation in Mexico and Dow Chemical is doing fine with their pan product salmon in the Pacific Northwest. They are not going to displace the price of OPEC oil.

Senator WEICKER. I understand the aquaculture programs at Milford, Galveston, and Charleston are due for reduction or elimination. Who made the decisions on these specific cuts?

Mr. WALSH. These were the cuts that were associated with the overall program reduction in this area. Once the general policy decision was made to cut an industry, we identified those people that were working with that kind of activity.

Again it flowed from the general policy.

Senator WEICKER. But did NOAA specifically say these are the ones they wanted closed?

Mr. WALSH. We said these are the people associated with this kind of research, yes, and identified—in other words, we were told, and we have planned to eliminate all the work that is done in them.

Senator WEICKER. I would say this—make it quite clear that if the facility at Milford, Conn., closes, I have no doubt that it will not be picked up by the State of Connecticut, I don't believe anybody in private industry will do it, either.

Mr. WALSH. There will still be 15 people at Milford.

Senator WEICKER. I am just indicating to you, not you, but in the editorial sense, you are making some assumptions here that don't pan out and are really going to set us back several years in all of these areas. That is what bothers me.

I have to push along here. I am on a tight schedule.

PROPOSED SALTONSTALL/KENNEDY LEGISLATION

On the business of Saltonstall/Kennedy, I want to listen in detail to the Secretary. Have you seen the proposed legislation to change Saltonstall/Kennedy?

Mr. WALSH. We have prepared the legislation. Basically the change that is being recommended is related to the requirement that was inserted in the American Fisheries Promotion Act last year which requires that at least 50 percent of the Saltonstall/Kennedy funds available in any fiscal year be spent on outside grants.

Under our proposal, we are changing the outside funding program and would request that Congress give us the flexibility to apply Saltonstall/Kennedy funds to our base expenses.

Senator WEICKER. Let me say it is my intention in the weeks ahead to work with Senator Packwood and the Commerce Committee in restructuring an alternative to the budget proposed by the administration as far as NOAA is concerned; in terms of the knowledge of NOAA. I don't think the administration knows how to reach first base. I would deeply appreciate any members of the agency contacting myself or Bob Wicklund and they can do so anonymously, because I am not here to put anybody in difficulty. That would assist in that task. I am sure that there are things that have been done that can go. But this budget will cripple the efforts of this Nation to achieve a balanced position in the development of the oceans, whether it is the food, energy, or knowledge of those oceans. I think we can do better. I would invite anybody who wants to participate in that effort to do so. These comments, I might add, are not directed to you. Nobody has done a better job over the years, as a member of the Commerce Committee staff.

Mr. WALSH. I had forgotten all about that. It has been so long ago.

Senator WEICKER. Or your participation in NOAA. So the rest of the questions will be submitted for the record.

I might add, to show you the ignorance of persons that are dealing with something that they have no knowledge of, in all of these areas, when I relate to land-based food, the administration budget, you know, agriculture, et cetera, all of that funding goes up. It is something they understand. Well, these are the farmlands of the future. We are not trying, even attempting to understand.

ADDITIONAL COMMITTEE QUESTIONS

I will submit questions for the record that I would like to be responded to for the record, both for myself, other members of the committee, particularly Senator Cochran, Senator Andrews, and there might very well be others.

Thank you very much.

Let's hope that we see each other again in a more pleasant circumstance.

Mr. WALSH. Thank you, Senator.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Budget Reductions

Considering the proposed cuts, what do you envision as the major thrust of NOAA over the next few years?

The Department has not yet formulated a detailed policy for the future requirements of NOAA.

However, given this Administration's desire to reduce Federal expenditures and the Federal impact on private and state/local government concerns, NOAA programs generally will address basic oceanic and atmospheric services and research required on a national, as opposed to a regional or particular impact, scale.

Budget Review Process

It is my understanding that OMB has not conferred readily with people in NOAA or any other agency when selecting the programs to be cut. Is this true, and if so, why should Congress go along with budget cuts that are not completely researched beforehand?

The Secretary participated throughout the process of selecting program reductions, conferring with both OMB and bureau representatives. The Commerce Budget Office prepared numerous alternative proposals for program phaseouts and phasedowns, consulting regularly with bureau personnel on the likely impact of various options. In the case of personnel reductions, final decisions were based on sets of proposals prepared by NOAA program managers. Although the time frame for preparation of the new budget was necessarily short, the final reductions were the product of considerably detailed analysis, based in almost all cases on information and options supplied by bureau and Departmental budget and program personnel.

Personnel Reductions

If NOAA is cut by 770 personnel in FY 1981 and 1982 the reduction will be very damaging. If this is carried out NOAA's actual employment level will be 491 below its 1971 level. From 1971 - 1980 27 bills were passed by the Congress all increasing NOAA's responsibilities. This reduction will shut down ships, laboratories and entire programs. Please comment on the effects of such a reduction.

This Administration is committed to a reduction in the level of Federal expenditures to secure a balanced budget and to thus stimulate American industry.

All Federal programs were subject to review and reductions -- NOAA programs were not exempted.

The Department's personnel ceilings were reduced 8.2% in 1982, or 2,487 positions. NOAA personnel ceilings were reduced 6% in 1982, or 770 positions. NOAA, therefore, was not intentionally singled out for budget reductions.

Primary NOAA functions, e.g., weather, oceans, climate services and research remain essentially intact. Lower priority programs were reduced.

The table which follows compares recent NOAA employment levels with those of the Department of Commerce and the Federal government as a whole.

Permanent Employment Since 1971

Actuals	NOAA	Total Commerce	Total Federal Government
June 30, 1971	12,587	28,435	1,955,536
June 30, 1972	12,675	28,412	1,910,863
June 30, 1973	12,471	28,300	1,874,417
June 30, 1974	12,505	28,549	1,916,304
June 30, 1975	12,546	28,667	1,917,352
September 30, 1976	12,680	28,876	1,906,849
September 30, 1977	12,835	29,480	1,908,988
September 30, 1978	12,934	29,587	1,921,662
September 30, 1979	12,823	29,072	1,893,391
September 30, 1980	12,725	29,222	1,882,300
Estimates			
September 30, 1981	12,247	28,453	1,868,300
September 30, 1982	11,930	27,640	1,854,100
Total reduction since 1971	657	795	101,436
Percent reduction since 1971	5%	3%	5%

As shown by the above table projected employment reductions in NOAA through 1982 will equal 5 percent of their 1971 employment. The Government-wide average projected employment reductions will also equal 5 percent. The overall reduction for the Department of Commerce is 3 percent. However, 809 positions were transferred to the Department in Fiscal 1980 from the Departments of State and Treasury pursuant to Trade Reorganization Plan of 1980. If these positions had not been transferred, the Department's reduction would have been 1,604 or almost 6 percent. This data shows that the reductions in NOAA personnel have not been disproportionate to similar reductions in the rest of the Department of Commerce and the rest of the Federal government during the same time span.

Sea Grant

Mr. Walsh, the Administration claims that the termination of the Sea Grant was based on the fact that the program has fulfilled its objective. Do you know how this determination was made?

(NOTE: The intent in the initial Sea Grant legislation was to create a continuing partnership between state and Federal governments.)

This conclusion was based on the belief that the Sea Grant Program was created to stimulate marine resource development activities in the coastal and Great Lakes states, and that this has happened.

A recent Sea Grant Task Force report states that the annual net return to the U.S. economy based on Sea Grant programs is about $217 million. In your experience with the program, do you believe that Sea Grant has done its share of meeting the economic needs of the nation?

There is no way to determine what Sea Grant's share of meeting the economic needs of the nation is. However, we do recognize that the Program has contributed to our economy.

Please tell this Committee what effect closing down the Sea Grant programs will have on NOAA's overall responsibilities?

Because the Administration believes that the users of Sea Grant research will continue to support programs of benefit to them, it is believed that the resources represented by Sea Grant Colleges will continue to be available if NOAA requires specific research. Because Sea Grant projects are primarily of local benefit, terminating Sea Grant will have little impact on national NOAA missions.

What is the future role of NOAA's Office of University Affairs?

The scientific and technical resources available at the universities will continue to be of major importance to NOAA. University Affairs activities will continue within the same level of effort, which is to strengthen the bonds between the university community and NOAA.

What are the impacts on universities with the withdrawal of Federal funds for the Sea Grant program -- assuming states and industry are unable to pick up the funding in such a short time frame? (Seek university impacts, student impacts, industry impacts, and the total services lost to the nation.)

This information is being compiled by the Sea Grant Association on a state-by-state basis. It should be available shortly. We will be sure that a copy is provided to the Subcommittee.

The U.S. has recently increased its jurisdiction out to 200 miles, an area almost equivalent to our land mass.

The Administration claims that Sea Grant has completed its mission when in fact only 16 of 34 coastal states and territories have established programs. In view of these facts, do you believe that Sea Grant has even come close to achieving its full mission?

We recognize that there are still many marine resources problems remaining to be solved but believe that there are ways to accomplish this other than through a NOAA/Federally funded Sea Grant Program.

<u>Saltonstall/Kennedy Program</u>

Briefly, what is the thrust of proposed legislation to change the Saltonstall/Kennedy program?

The proposed legislation will convert the present mandatory grants program into a discretionary one. In addition, the requirement to spend 50 percent of the available S/K monies on the grants program will be eliminated to provide the Agency with greater flexibility in administering its development program.

What is the amount expected to be available in the S/K Fund in 1981 and 1982?

The amount available in FY 1981 is $35 million; in FY 1982, $26.7 million. Congress has transferred $15 million to the ORF account in 1981. The Administration budget proposes to transfer $5 million additional in 1981. In 1982, the Administration proposes to transfer $16.7 of $26.7 million to ORF for other fisheries programs.

Of the 1982 receipts from the S/K Funds, what fishery development programs will NOAA fund and what will happen to the remainder of the receipts?

The proposed FY 1982 budget indicates that $10 million of the available $26.7 million of S/K funds will be available for $8 million of base program activities and a $2 million grants program. The remainder of the funds will be transferred to the Operations, Research, and Facilities appropriation to offset the need for $16.7 million of new budget authority in FY 1982.

What proposed project requests have been received by NOAA from S/K Funds? How many of these projects meet program objectives and thus qualify for funding?

No proposals have been submitted for competitive funding for in-house projects for FY 1982. For FY 1981, approximately 60 have been submitted, primarily by NMFS. These 60 proposals will compete for available S/K funds.

Aquaculture

The Reagan Administration has targeted non-Salmon aquaculture for elimination. Can you tell this Committee why salmon was excluded?

The Administration chose aquaculture as a candidate for reduction on the basis of its government/business partnership. Research results from aquaculture research and development activities for non-salmonid animals are used primarily by the private aquaculture community and is proposed for reduction. The results from salmonid aquaculture research and development efforts are used primarily by the public sectors for mitigation and enhancement of wild stocks. The salmonid studies impact the commercial, recreational, and private harvest of hatchery and wild anadromous salmon. It should be pointed out that the private salmonid sector has carried out some aquaculture research and development activities, but only to a very limited extent. If salmonid research (Federal) were terminated, we would not be in a position to improve production efficiencies to meet mitigation, conservation, and enhancement provisions of the Mitchell Act and enhancement goals of the Salmon and Steelhead Conservation and Enhancement Act of 1980.

Salmon programs are also proposed for reduction in the revised budget through termination of the Anadromous Fisheries Grants Program and reduction of the Salmon Vessel Buy-Back Program from $15 to $5 million through a separate 1981 rescission action.

I believe that marine aquaculture will be an important part of our fisheries in the future and that private industry will support aquaculture only after the government completes some basic research requirements. Don't you think that the elimination of aquaculture programs will considerably curtail industry involvement in the future?

Most people who have been involved with aquaculture of marine species, regardless of what sector of the aquaculture community they represent (Federal, State, local academia, or private) believe that aquaculture will, in the future, play an important part of our total fisheries. However, in the case of most major species studied, there is a significant base of information and technology available for successful commercial operations, provided other conditions are favorable. These conditions represent the area of profitability. With the available R&D base, the Administration feels that it is incumbent upon private industry without Federal assistance to develop better production-oriented techniques that will make aquaculture more economical. These techniques run the gamut from improved mechanized methods of harvesting and processing, greater automation, new energy-saving approaches, to marketing efforts for the packaged product. All of these factors will reduce costs while at the same time increase productivity.

I understand that the aquaculture programs at Milford, Galveston, and Charleston will end. Who made the decisions on these specific cuts?

The Office of Management and Budget identified non-salmonid aquaculture as a specific budget cut based on the desirability of the private sector funding those areas from which it benefits. Non-salmonid aquaculture programs involve mollusks (oysters, clams, etc.) and crustaceans such as marine shrimp and freshwater prawn (Macrobrachium). Research studies on these species are carried out at the Milford, Galveston, and Charleston laboratories, respectively. Hence, it will be these laboratories that will be affected.

If this is true, then why has aquaculture programs in the Departments of Agriculture and Interior been increased for FY 1982?

We are not familiar with either the specific policy decisions or the rationale pertaining to the FY 1982 aquaculture budgets for these agencies.

Coastal Zone Management

For the record, would you submit a state by state breakdown of the impact of eliminating this $37 million program?

NOAA's Office of Coastal Zone Management has completed a staff estimate of the likely effects on state CZM efforts from the proposed phase-out of Federal implementation grants at the end of FY 1981. The estimate is based on NOAA staff discussions with

state program managers and is thus subjective in nature. States were grouped into four categories of impact.

Category 1:

States without approved programs unlikely to pursue Federal approval absent §306 funding (7 or 8 states).

1. New Hampshire - Legislation has failed twice and still has opposition. The bill requires Federal funds for the new laws to operate; the prospect of no funds next year makes passage very difficult.

2. New York - Legislation has failed in the Senate twice before. Available Federal funds is a major issue and rationale for the legislation, although erosion legislation might still pass.

3. Virginia - The absence of funding for coal impacts under §308(c)(3) of the CEIP is a major disincentive to seeking federal approval although loss of §306 funds will also have a negative impact.

4. Ohio - In the absence of clear Federal funding support in FY 82 and economic and budget problems within the State, the Governor's Office has postponed indefinitely introduction of the legislation needed for Federal approval.

5. Indiana - Legislation was defeated on March 2; questions of funding availability under §306 created a loss of interest in the bill at Committee hearings.

6. Texas - The Governor of Texas has decided not to submit a CZM program for Federal approval at this time due to uncertainty over both §306 funds and future changes in the Corps of Engineer §404 program.

7. (Possible) Florida - Although the DEIS on Federal approval of the program is out for review, and a FY 81 grant is proposed, the State could decide that initiatives in the area of hazard management and coordination mechanisms are not worth the price.

8. Georgia - Although not currently participating in CZM, the State has kept an eye on the Federal statutes and was considering the possibility of applying for approval at a future date. This is now considered unlikely.

Category 2:

States with approved programs likely to dismantle the CZM agency and efforts if there is an immediate phase out (10 states).

1. Maine - Over 70% of funds have been spent on one-shot projects in towns, which would stop. State support for wetlands and other state law enforcement would return to prior minimal levels, and the program itself would likely cease to exist.

2. Massachusetts - In light of the lack of a program basis in state statute and the severe economic constraints of "Proposition 2 1/2," it is unlikely the

Commonwealth would keep the effort going, including excellent State executive orders, local programs, and wetlands laws.

3. Connecticut - The towns have taken seriously their responsibilities under the Coastal Area Management Act to review site plans. But Federal funding was a major selling point of the program, and repeal or reduction of authorities could well result.

4. Pennsylvania - The laws are new and the staff is heavily supported by the Federal grant. The program has just gotten underway at a time of severe state budget cuts and would be unlikely to survive.

5. Alabama - The program is locally oriented but has been consistently threatened by state agencies in Montgomery who would likely dismantle most of the program efforts, especially those dealing with hazard mitigation and water quality improvement in the bays.

6. Alaska - The Alaska Coastal Management Program (ACMP) is already under attack by development interests and state agencies, both unaccustomed to coherent and directive state decision-making. Loss of funds will lead to loss of support from towns and districts who strongly back the program as in their long-term interest.

7. Virgin Islands - In a place where little else seems to work, Coastal Zone Management has worked. Although controversial, the the program has taken a firm place in the regulatory structure of the Islands. Funding will be a severe problem, however, and could cause repeal of the CZM law.

8. American Samoa

9. Guam

10. Northern Marianas

The latter three programs have recently been approved and are just getting underway. The are totally dependent on Federal grants for support and if cut off now would collapse. If sustained, the could meet important local and regional needs to manage tourism, develop fisheries, and site new industry.

Category 3:

States with approved programs likely to shut down a separate CZM effort, but continue the program activities at much reduced dollar levels if there is an immediate phase out (10 states).

1. Delaware - The various state laws, including the Coastal Zone Act, would continue to be implemented at reduced staff and enforcement levels. New approaches and most creative aspects of the program, including permit simplification, would be curtailed.

2. Maryland - After a long slow process building public support and visibility for CZM in Maryland, the State would probably drop

everything new and return to basic regulatory functions. Special projects and funding of county CZM "agents" would cease.

3. North Carolina - Although a super program based on a strong state law, there are hearings in 1981 and 1982 related to a 1983 sunset provision. Federal money is very important to survival and continuation of the exceptional work in hazards management. Without it, State efforts would revert to dredge and fill permits.

4. Michigan - The State Department of Nature Resources has already suffered a 47 percent budget cut due to economic conditions in Michigan. All emphasis on coastal areas within the State regulatory structure would likely be discarded with the authority implemented statewide at a far lower level of support.

5. Wisconsin - The State DNR would continue to carry out basic laws such as the Shoreline Act at a reduced level of staffing and enforcement. Separate attention to the coastal zone and the continued operation of the Coastal Management Council would probably fall victim to budget constraints.

6. Mississippi - The Bureau of Marine Resources would continue its functions, but the major initiatives to manage wetland areas and help better direct industrial locations would be severely curtailed. The program would continue only its essentially regulatory aspects.

7. Puerto Rico - Special attention given to coastal areas of Puerto Rico would probably be eliminated from DNR programs, including excellent programs of special area management for important lagoon and estuarine areas.

8. Oregon - The coastal focus of Land Conservationand Development Commission (LCDC) programs would probably be dropped in favor of a single state-wide effort absent the Federal funds. Overall state monitoring and enforcement would probably be reduced, and the pace of approval of LCP's would fall even more behind schedule.

9. Washington - The state would return to the narrow job of carrying out the Shoreline Act; focus on interagency and coast-wide issues such as fisheries would be lost, and monitoring and enforcement would be reduced. Development of clear statements of state authority over such issues as activities on lands adjacent to shorelands would be further delayed.

10. Hawaii - The establishment of clear implementation responsibilities for state agencies under the Hawaii statute will be further delayed, and tension between state and counties could well re-emerge as pass-through funds are reduced or eliminated. Progress made in recent years to work things out between the state and the counties and among state agencies could all be lost.

Category 4:

States with approved programs likely to continue a separate CZM function if there is an immediate phase out, although at a reduced level (5 states).

1. Rhode Island - The institutions are well established and the implementation costs are not that great. Some good support work for the Coastal Resources Management Council may be lost.

2. New Jersey - The Coastal Area Facilities Review Act (CAFRA) effort is well-established and has withstood political and legal challenges; the new Waterfront Development Act implementation might suffer.

3. South Carolina - The Council is strong and confident and likely to be supported and budgeted; some creative and long-term work looking beyond permitting actions could well be lost.

4. Louisiana - The political compromises were so painful and the desire of the public so strong to have the state manage the wetlands that the program is likely to survive and be funded from the State's bountiful surpluses.

5. California - The Commission has met and bested far bigger crises than this, which represents a loss of about one-third of their budget. The legislative climate looks good, and as long as nobody cares about Local Coastal Programs (LCP) one way or the other, survival with strengths is a good bet.

Of the 25 states with approved coastal zone plans, it is estimated that only 5 states would be able to maintain those plans without Federal assistance. Please comment.

It is estimated that only five states will be able to continue a separate CZM function once Federal aid is discontinued.

An additional 10 states are estimated to be capable of continuing some of their established CZM activities, although not in the context of a separate CZM program.

Therefore, a minimum of 15 states will be able to continue some or all of their CZM activities without Federal funding.

The CZM program has thus resulted in the creation of durable administrative structures and/or programs to guide coastal resource management in 60% of the states in which programs were approved.

National Undersea Research Program

Mr. Walsh, as you well know undersea research has been under the gun for the past few years. Now the Reagan Administration proposes to rescind $500,000 in FY 1981 and reduce the program by $1.4 million in FY 1982.

What effect will this reduction have on achieving the goals of this program?

The $500,000 reduction for NURP in FY 81 and the decision not to request an addition of $1,367,000 in FY 82 are wholly consistent with the Administration's intent to reduce Federal expenditures. The original program goal can be met in at least a limited way.

The 1982 budget submitted in January proposed to increase NURP by $1,367,000 to begin construction of a West Coast underwater facility at the University of Southern California; strengthen existing programs with the Southeastern Consortium for Underwater Research (SECURE) based at the University of North Carolina, and the programs of the University of Hawaii; provide additional HYDROLAB support in the U.S. Virgin Islands; and increase NOAA's use of underwater submersibles.

NOAA will continue undersea research programs through the HYDROLAB; the University of Hawaii, the University of Southern California and SECURE underwater habitat programs; and the ALVIN submersible.

Marine research based on newly developed manned underwater technologies and facilities will be postponed.

Sand Point

We have a proposed rescission of $9 million for Sand Point which would eliminate the construction of an education center. If approved, how will this affect NOAA's mission?

Approximately $8.5 million of the proposed $9.0 million rescission relates to the proposed elimination of construction of a separate education center. This will reduce training opportunities in the Seattle area and require deferral of plans to invest in more adequate government-owned training facilities. Employee training would continue to be accomplished on a decentralized basis within leased space. Activities of the National Weather Service (NWS) Training Center, which was to be the primary occupants of the planned Education Center, would continue in its present leased site in Kansas City.

At Seattle, other arrangements would be explored to provide common-use seminar and auditorium space that were part of the Education Center design. This may be accomplished by an addition to another building or entering into a space-use agreement with the University of Washington. Anticipated savings by avoiding lease costs would not be realized.

Loss of the Reception Center ($0.5 million) would have little adverse affect on NOAA's responsibility of disseminating information to the public. However, this loss would be a serious disappointment to many local citizens in the Sand Point area who have actively supported the project.

Would you give us an update on how construction is proceeding for Sand Point? How much of the previously appropriated funds (approximately $75 million) have been obligated to date? Have all construction contracts been let?

Twenty percent of the project has been constructed or is currently under construction. Major project elements thus far completed include the Operations Building, Site Demolition and Preparations, North Gate Corridor, and Dredging.

Approximately $18.5M of the $68.47M now available has been obligated as of January 31, 1981 with expenditures of $16.3M.

No - Thirty percent is presently in the construction bidding process. All major project construction work will be under contract by the end of FY 1981 with the exceptions of the ship berthing facility and building interiors.

The lawsuit Save Lake Washington vs NOAA is now before the Ninth Circuit Court of Appeals. What possible effects may this action have on the operational capabilities of Sand Point?

The action now pending with the Ninth Circuit Court has no present affect on planned construction or operation activities at Sand Point. In the event Save Lake Washington were successful in their appeal, NOAA might be prevented from continuing off-shore development until such time as NOAA satisfied the findings of the Court or be required to accept some limits in the use of its planned staging piers. If forced to abandon plans to construct a staging pier NOAA would not have the operational capability of; (1) on-loading and off-loading equipment while being immediately adjacent to shops, warehouse, and laboratories at Sand Point; (2) the capacity of removing survey launches and other small craft from the water for modification in the boat repair facility; or (3) having a vessel present for public events, agency open-houses, or ceremonial activities.

Do you believe that it would be prudent to hold-up bids on future construction? Since NOAA is now taking ships out of service, and the operational capabilities of Sand Point are under question, should this project be re-evaluated?

Nearly $20 million has been committed for development of a major oceanographic and fishery research center in Seattle. Twenty percent of the Sand Point project has been constructed or is under construction. An additional 30% is in the bid process. Our experience is that delay in acting on bid tends to increase costs. Rebidding or redesign creates greater cost penalties and, of course, also defers the time when benefits can be realized from the project.

The proposal of taking two NOAA vessels out of service has no affect on Sand Point design. Only a limited pier is now planned for staging and operational activities.

Continued development at Sand Point will solve NOAA's needs for modern and efficient facilities to support its expanded programs, to improve its managerial controls and planning functions, and to become more cost efficient through centralized services and lease avoidance. There appears to be no legal, programmatic, or operational consideration that would necessitate a re-evaluation of the project given that many of the original justifying factors are still valid.

NOAA Fleet

The Administration proposes to deactivate three ships: The Surveyor, Oceanographer and the George B. Kelez. Will these deactivations affect NOAA's ability to carryout its responsibilities?

The deactivation of the NOAA Ships SURVEYOR and OCEANOGRAPHER will reduce ship support services now being provided to DOI for the OCSEAP and to NOAA for carrying out NOAA's responsibilities under the National Climate Act of 1978, and Seabed Marine Mining Act of 1980. Coastal research scheduled for the KELEZ is being accommodated to the extent possible by other ships of the NOAA fleet. While NOAA will continue to meet its responsibilities in Ocean Pollution Monitoring, Marine Assessment Studies, and the Conservation and Management of Habitats, the support to these programs will be somewhat reduced.

Are there any plans to replace the duties of these ships with leased vessels?

It is NOAA's understanding that DOI plans to lease vessels to replace the NOAA Ships SURVEYOR and OCEANOGRAPHER for continued ship support to DOI's OCSEAP. NOAA is reassessing its priorities to accommodate high-priority programs, either by reallocation of ship time from other NOAA vessels or by leased vessels.

Four years ago when I first sat on this Subcommittee, NOAA had 28 major research vessels, now there are 22 with an additional three slated for deactivation. Do you expect this trend to continue until NOAA becomes a land based agency?

Four years ago NOAA had 25 vessels. One new vessel has been built since then, the CHAPMAN. Two other vessels which were unseaworthy, the BOWERS and the OREGON, were deactivated. The NOAA Fleet will consist of 21 vessels after the deactivation of the Ships SURVEYOR, OCEANOGRAPHER, and KELEZ. The remaining vessels are required to conduct oceanographic research and ocean surveys necessary to meet NOAA's missions. NOAA has no plans at present to reduce further the size of the NOAA Fleet.

Fisheries Development

What would the effects be on the fishing industry if the Administration proposal to cut $17 million for fishing development programs including $7 million for State grants and $10 million Saltonstall/Kennedy funds is supported by Congress?

The President's Economic Recovery Program should encourage growth in the fishing industry. The fishing industry will develop when the economic opportunity exists and therefore the fisheries development funds proposed for reduction from the Saltonstall-Kennedy Fund are not necessary to assure that development. The amount available for assistance to states, $7 million, primarily benefits those areas and should be supported by them.

Fishermen tell me that if the government were to support consumer education programs, full utilization of S/K funds for fishery development programs, and the newly passed American Fisheries Promotion Act, the domestic fishing industry would thrive. Please comment.

As stated above, it is the Administration's position that the fishing industry will develop when the economic opportunity exists. The Department and NOAA are reviewing the implementation of AFPA.

President Reagan has placed a $75 million ceiling for the fishing vessel obligation loan guarantee program which is now available for shoreside facilities. I understand that this amount will not cover the fishing vessels much less the shoreside facilities during FY 1982. Is this true?

Ceilings have been placed on all Federal loan programs including the fishing vessel obligation loan guarantee program. The Administration has not yet completed its review for the implementation of the American Fisheries Promotion Act, including the provision of loan guarantees for shoreside facilities.

How much is necessary to cover shoreside facilities over the next year?

As this represents a potential new start-up for the agency, we have no historical basis for supplying an estimate. The apparatus for accepting applications for these guarantees will not be ready until the end of FY 1982. If implemented the shoreside facility applications, nonetheless, will have to compete with loans for fishing vessels within the resource ceiling available.

Fishermen have identified the high cost of fuel as one of their major problems. Is there anything that can be done to help them with this problem short of direct subsidies?

Aside from direct subsidies, there are a number of actions that the Federal government can take to help alleviate the impact of high fuel costs. There are currently available such devices as kart nozzles and variable pitch propellers that can reduce vessel fuel consumption. We may want to examine the possibilities of targeting existing Federal loan programs and allowing accelerated depreciation for such energy savings equipment. The NMFS is currently studying the suitability of sail-assisted power for fishing operations. Special tax treatment and applicability of Federal loans for retrofitting existing vessels or in the construction of new vessels may also be considered.

Do you believe that the export of species not in demand in this country can have a beneficial impact on the enormous trade deficit created by our imports of fish and fish products?

It already has had an effect. In 1979, imports reached almost $4 billion. Exports exceeded $1 billion for the first time and kept the deficit stable. In 1980, the deficit was reduced by $200 million. Export of many species which would take massive marketing campaigns to sell in the United States, will reduce the deficit further. In addition, the utilization of some species here, such as squid, is increasing and will reduce imports. Most of all, exports of several species, such as Alaskan pollock and flatfish directly to foreign markets will benefit U.S. firms and eliminate the foreign middle men who catch the product off our shores and sell it to other countries in competition with our exporters.

Do you believe that it is in the best interest of this nation to phase-out all foreign fishing within our economic zone?

We believe that foreign fishing should be phased out when American fishermen can utilize the species involved. Precipitous phase-out will do nothing more than impact on foreign economies which could have a long-term impact on our other relations with these countries. The major problem with U.S. utilization of these species has been the lack of markets overseas, caused by problems of quality, poor understanding of other cultures and their needs, and market barriers erected by those countries. We will continue to work to reduce those barriers. We have been successful in this effort in Japan, Spain, and Portugal and are continuing to work with other countries to enable U.S products to enter their markets. At the same time, we are providing information to potential U.S. exporters on quality, foreign regulations, and species-specific information on what those countries eat, how they want them prepared, and in what quantities they plan to import.

Fishery Conservation and Management Act

I've had several discussions with commercial fishing representatives concerning the future of fisheries programs within NOAA. They tell me that the National Marine Fisheries Service and the Regional Councils are wasting money and time by setting up management plans for species that are not important or not heavily fished and suggest that this program could be streamlined to eliminate inefficiency and unnecessary regulations. What are your views on this proposal?

The Councils by law have the responsibility to determine which fisheries need management. In the early years of MFCMA implementation, they were encouraged by NMFS to consider plans for all fisheries. In recent years, however, Councils have been required to submit work plans to show that proposed fishery management plans are justified, will not be too costly to implement, are enforceable, and will not create excessive burdens on fishermen. NMFS has rejected several work plans on this basis.

In addition, NMFS has encouraged some Councils to combine several Fisheries Management Plans (FMPs) in order to prepare multispecies management plans, and to have States take more initiative in management of fisheries. Under EO 12991, we will be required to review proposed FMPs even more critically. Some fishermen have complained when rational Council plans did not treat them as they believe they should have been treated. However, some FMPs have required inefficient operations which can no longer be tolerated.

GAO has pointed out in a number of reports that fishery "resource assessment" is a basic problem in developing appropriate fishery management plans under the provisions of the Fishery Conservation and Management Act. What kind of progress has been made in this area? With the anticipated loss of three National Ocean Survey vessels due to planned budgetary cuts, will this have a serious impact on the time table for developing the remaining plans?

The Marine Resources Monitoring, Assessment and Prediction Program (MARMAP) is a data collection, technology development, and data analysis program that provides information on the abundance, composition, location, and condition of marine fishery resources

of interest to the United States. The program serves a multiple clientele, including Federal fishery managers and Regional Fishery Management Councils. It also serves State managers, Federal and State fisheries development agencies, fishery development foundations, the oil and gas industry, habitat managers, fishermen, fish processors, and the academic community.

NMFS assembled an in-house task force to address resource assessment activities. A final draft of the task force report is now prepared. This report addresses stock assessment methods, the adequacy of the technology, and provides recommendations for future action.

The layup of three NOAA fleet ships will have a minor indirect impact on NMFS resource assessment activities. MARMAP Survey I (icthyoplankton) will be reduced about five percent and groundfish assessment in the Gulf of Alaska and the Bering Sea will be reduced by the same amount.

How much consideration is given to recreational fish catches in developing fisheries management plans?

Unfortunately, recreational fish catches are not considered in a number of FMPs because data is either unavailable or it is inaccurate. Recreational fishermen catch significant amounts of cod, haddock, and yellowtail flounder which are not fully considered in the New England Groundfish Plan. This is true for mackerel, Gulf of Mexico reef fish, Gulf of Mexico groundfish FMPs, and for others that are to be implemented in the coming year. Congress approved an increase of $825,000 in 1981 for the collection of recreational fisheries statistics that will alleviate current data shortfalls.

Marine and Estuarine Sanctuaries

Marine and Estuarine Sanctuary Programs are the only survivors in the President's budget for Coastal Zone programs. How do you perceive the direction of these programs in future years?

The Program will seek to identify and designate special marine areas as National Marine Sanctuaries.

The Program will continue to emphasize the management aspects of Sanctuary designation such as the benefits derived from fostering research, promoting public education and interpretation and coordinating management. Therefore, we are now incorporating the site Management Plan (which will include regulations as necessary) into the Environmental Impact Statement (EIS). By preparing a site Management Plan as part of the EIS process, the public and private sectors will have a much more complete proposal on which to comment and a much clearer picture of the purposes and effects of sanctuary designation.

New regulations will be promulgated only if immediately necessary. Research and monitoring programs will be established to assess various potential impacts on the resources. If we find evidence of resource deterioration, additional steps will be recommended to strengthen management of the Sanctuary. These steps will start first with further improving the effectiveness of existing authorities and programs and, as a last resort, may involve new regulations.

Interest in the Estuarine Sancturary Program on the part of states is accelerating. By the end of FY 1981, we will have received requests for pre-acquisition and acquisition grants that are nearly three times the amount of the budget. We expect that this demand will continue to increase. During this fiscal year, we will conduct a scientific evaluation of the current biogeographic breakdown of estuarine types. Results of the study will assist us in evaluaating future areas for estuarine sanctuaries.

MARINE AND ESTUARINE SANCTUARIES

If the Office of Coastal Zone Management is reduced as drastically as the Administration proposes, will there be any proposals to move the Marine and Estuarine Sanctuary Programs somewhere else within NOAA? If so, where?

Currently, there are no such proposals. The proposed Administration budget for FY 1982 contains funds to maintain an Office of Coastal Zone Management (OCZM). As long as that office is operational, it is very likely that both the marine and estuarine sanctuary programs will continue to reside in OCZM for administrative purposes.

Marine Sanctuaries

NOAA has a number of nominated sites on its list of recommended areas that might be further considered for sanctuary designation. What specific criteria, priorities, or other factors are considered in determining which potential sites will be selected as "active candidates" that actually receive extensive evaluation and ultimately become sanctuaries?

The National Marine Sanctuary Program is proposing to eliminate the present List of Recommended Areas (LRA) and establish a clearer procedure including more precise criteria for selecting areas and choosing active candidates for ultimate designation consideration.

The LRA is a list of all recommended sites which have met minimal screening criteria. Under our present regulations, listing on the LRA is a prerequisite for sanctuary designation but does not imply that designation will ever occur.

Satellites

Both NOSS and Landsat environmental satellites are proposed to either be eliminated or substantially reduced in FY 1981 and FY 1982. Yesterday Secretary Baldrige testified that the Department will recommend that both systems be taken over by NOAA in FY 1983.

Does this mean that funding will resume in 1983?

The Reagan budget request eliminates funding for NOSS and reduces the funding for Landsat in FY 1982 to $2.1 million. The NOSS program is deferred indefinitely. NASA is constructing Landsat D and D' spacecraft and the associated ground system. Landsat D is scheduled for launch by NASA in the third quarter of 1982. After the satellite and ground system is checked out and able to produce Multi-Spectral Scanner (MSS) data on a reliable basis, the spacecraft and MSS ground system will be turned over to NOAA for operational use, probably early in 1983. The Administration plans

to include funds in NOAA's FY 1983 budget request to cover Landsat maintenance and operations costs.

Which of the two programs, NOSS and Landsat, best meets the objective of NOAA's responsibilities?

(NOSS is strictly an Oceans Satellite, Landsat is agricultural, forestry and geologically oriented.)

Why is NOAA the lead agency for Landsat?

NOSS, National Oceanic Satellite System, is of interest to NOAA through its potential value in its oceanic programs. NOAA, and the Department of Commerce, are minimal users of Landsat data.

NOAA is assigned the lead responsibility for managing the operational LANDSAT program primarily because of its civil operational satellite experience gained through the operation of the environmental satellite programs. No other civil agency has similar experience. Consolidation of all civil operational remote sensing satellite programs in one agency provides an opportunity for increased efficiency compared to separate program management and operation.

I understand that Landsat will operate on the basis that private interests will take on its operation in the future. Have you yet identified potential private operators and users?

During FY 1980, NOAA conducted a two-day workshop for potential private operators in which the private sector interest in the operation of this program was explored in some detail. The transition plan prepared by NOAA last June reflected the input of some 20 corporations. Since that time NOAA has met with various companies to explore further their interest in investing in the system. At this time, two corporations have indicated some possible interest, although no specific proposals have been suggested.

With respect to potential private users, NOAA last year conducted five workshops for non-Federal users of Landsat data to solicit their views as to the future of the system. NOAA now is conducting another series of five workshops with non-Federal users to ascertain their interest in products and services from the operational Landsat system. The community of private users breaks down into the major categories of value-added companies, geological and exploration industries, natural resources industries, mapping and land use planning.

State/Federal Process

What has been the response of coastal States to NOAA's State/Federal process?

Those States that have been contacted have reacted positively to the process.

What effect will the President's proposed budget cuts have on the State/Federal process?

The budget cuts will curtail the implementation of the process.

Trade

The Reagan Administration proposes a $1,100,000 cut for fish trade programs and at the same time has increased the Department of Commerce ITA budget. Can you explain this apparent inconsistency?

The $1 million cut reflects elimination of an increase for export trade development contained in the Carter budget. The Administration believes that International Trade Administration should provide the principal role in overseas trade activities. We have cooperated with ITA over the past several years to expand awareness of U.S. products in the fisheries area. We have also undertaken trade missions and operating trade shows to supplement ITA's lack of personnel and technical fishery expertise. We shall continue to provide support for ITA activities and to provide overseas staff with fishery information and, where requested, to assist in the study and development of foreign markets for fishery products.

D.C. Area NOAA Location

Please supply for the record a listing of all Washington, D.C. locations occupied by NOAA including the number of employees assigned to each activity in each location. How are these figures anticipated to change for the end of fiscal year 1982?

Buildings and Locations in Metro Area	Number of Employees
Commerce Building 14th & Constitution Ave., N.W. Washington, D.C. 20007	569
Page 1 2001 Whitehaven Blvd., N.W. Washington, D.C. 20008	420
Page 2 3300 Whitehaven Blvd., N.W. Washington, D.C. 20008	501
* Navy Yard Annex 202 M. St., S.E. Washington, D.C. 20370	0
* Navy Yard Annex 160 M. St., S.E. Washington, D.C. 20370	59
* Navy Yard Annex 158 M. St., S.E. Washington, D.C. 20370	0
Bethesda Building Wall Lane & Rockville Pike Bethesda, MD 20852 20852	336
World Weather Building 5200 Auth Rd. Hillcrest Heights, MD 20031	459

Buildings and Locations in Metro Area	Number of Employees
Riverdale Warehouse 1 6501 Lafayette Ave. Riverdale, MD 20840	244
Rockwall Building 11400 Rockville Pike Rockville, MD 20853	417
Wilkins Avenue Building 12100 Parklawn Ave. Rockville, MD 20800	24
Washington Science Center 1 & 2 6001 Executive Blvd. Rockville, MD 20852	612
Washington Science Center - 4 6009 Exeuctive Blvd. Rockville, MD 20852	43
Washington Science Center - 5 6010 Exeuctive Blvd. Rockville, MD 20852	462
Grammax Building 8060 13th St. Silver Spring, MD 20012	761
Suitland House 4510 Silver Hill Rd. Suitland, MD 20028	27
Federal Office Building - 4 Silver Hill Rd. Suitland, MD 2--28	562
Federal Office Building - 3 Silver Hill Rd. Suitland, MD 20028	50
* Riverdale Warehouse - 3 6501 Lafayette Ave. Riverdale, MD 20840	0
Totals	5,546

*Storage Buildings Only.

A reduction of 202 employees is expected in the Washington, D.C. area by the end of fiscal year 1981. The total reduction through fiscal year 1982 has not yet been determined.

Consolidation of Administrative Offices

Mr. Walsh, it is my understanding that the Department is planning to consolidate a number of administrative support offices such as Congressional Affairs, Public Affairs and Budget, are you aware of these plans?

What effect would such a consolidation have on your operations?

In a memorandum dated March 16, Deputy Secretary Wright asked each of the department's agency heads to examine their administrative overhead and take steps to streamline operations. He also has asked the Assistant Secretary for Administration in connection with these reviews to analyze, among other matters, administrative functions which might be consolidated and/or centralized. The review is to embrace all general staff functions - legal, congressional liaison, public affairs, and adminstration. Because no decisions have yet been made as to which activities, if any, may be consolidated, it is impossible to assess the effects consolidation may have on NOAA operations.

Questions Submitted by Senator Byrd

Weather Services in the State of West Virginia

I have been advised that the Reagan Administration plans to close two Weather Service Offices in West Virginia -- one in Parkersburg and one in Elkins. Is that correct?

The 1982 NOAA budget request does propose to close the Parkersburg and Elkins Weather Service Offices (WSO's).

How many offices are being closed nationwide and what are the criteria?

There are 38 WSO's proposed for closing in 1982. These part-time WSOs do not have major network data acquisition responsibilities for upper air and weather radar observations. Their functions are to provide surface weather observations, local adaptive forecasts, warnings, advisories, aviation briefings, and other public weather information and services to the local population, as well as to disseminate forecast and warning products to the affected, local public. County forecast and warning responsibility will be re-assigned to adjacent offices when these offices are closed.

What is the savings nationwide and in West Virginia?

Nationwide:	$1.85 million and 85 employees;
Parkersburg:	$21,000 per year and 1 employee;
Elkins:	$90,000 per year and 4 employees.

What services do these two offices provide and how will these services be provided if the offices are closed?

The service provided by the Parkersburg WSO is the issuance of adaptive local weather forecasts. (The office is open 10 hours a day, Monday through Friday.) During the hours the Parkersburg WSO is not open, the zone forecasts, prepared and issued by the Charleston Weather Service Forecast Office (WSFO), are available to the Parkersburg news media via NOAA Weather Wire Service (NWWS) and the Press Wire Services.

After closure of the Parkersburg WSO, the zone forecasts will continue to be provided by WSFO Charleston; however, there will be no adaptation of these forecasts to better define the local conditions. This is not unusual because presently, for many areas of the country not directly served by a Weather Service Office, the zone forecasts are used as local forecasts.

The services provided by the Elkins WSO include (1) issuance of adaptive local weather forecasts; (2) programming for NOAA Weather Radio (NWR) broadcasts; (3) weather warning responsibility for 11 counties; and (4) weather observations. (The Elkins WSO is open 16 hours daily.) During the hours the Elkins WSO is not open, the Charleston WSFO assumes the weather warning responsibility. The zone forecasts, prepared and issued by the Charleston WSFO, are available to the Elkins news media via NWR, NWWS, and the Press Wire Services.

After closure of the Elkins WSO, (1) Zone forecasts will continue to be provided by WSFO Charleston but without adaptation of these forecasts to better define the local conditions; (2) WSFO Charleston will provide 24-hour programming of the Elkins NWR; (3) weather warning responsibility will be assumed full-time by WSFO Charleston; and (4) the weather observations will continue if arrangements can be made at no cost to the National Weather Service.

I am seriously concerned about a possible decline of weather Service in West Virginia, especially the weather warning services provided to 11 counties by the Elkins Office. Frankly, I think these proposed closures are unwise and shortsighted. What assurances can you give me that the closure of these two offices will not endanger the citizens of the area served by these stations?

WSO Parkersburg does not have weather warning responsibility; warnings for that area are provided by WSFO Charleston.

In the case of WSO Elkins, WSFO Charleston has the warning responsibility 1/3 of the time now. The same modes of dissemination and lines of communication used by WSO Elkins to disseminate warnings are available to and will be used by WSFO Charleston to disseminate warnings to the 11-county area on a full-time basis. In addition, WSFO Charleston will be programming the Elkins NWR 24 hours a day as compared to the present 15 1/2 hour programming provided by WSO Elkins.

Are there any moves to reconsider this decision or is the decision final? Will you let me know if there is any move to reconsider any of the 38 closings?

The proposed closing of WSO's is consistent with the President's goal to reduce the level of Federal expenditures and employment. The Department remains committed to the President's goal. The Department has proposed closing many of these WSO previously and believes adequate weather services will be maintained. The Department will inform you promptly if any changes are considered.

What provisions are being made to accommodate the displaced employees?

Maximum efforts will be made to provide displaced employees with similar jobs in other offices as vacancies occur.

The fiscal year 1981 State, Justice, Commerce, the Judiciary, and related Agencies Appropriation Bill included $250,000, at my request, for the establishment of an Integrated Flash Flood Observing and Warning System (IFLOWS) in West Virginia. This system would have provided an improved weather warning system to the citizens of West Virginia who live in one of the most highly flood-prone regions of our country. What are the current plans of the Reagan Administration for this project?

With the appropriated funds, we are proceeding to expand the NOAA Weather Radio (NWR) network in West Virginia. This system is to

be the vehicle for dissemination of IFLOWS flash flood information in flood-prone areas. Detailed plans have been developed in conjunction with regional and state personnel for six additional NWR transmitters which will be programmed from five additional consoles. Three consoles in Charleston, W. Va., will program transmitters in Hampshire, Roane, and Braxton counties. Two consoles in Beckley, W. Va., will program transmitters in Summers, Raleigh, and Mingo counties.

I ask unanimous consent that a letter from me to then Chairman Hollings dated February 9, 1980, be incorporated into the record at this point.

FEBRUARY 9, 1980.

Hon. ERNEST F. HOLLINGS,
Chairman, Subcommittee on State, Justice, Commerce, the Judiciary, Committee on Appropriations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The National Weather Service, a unit of the National Oceanic and Atmospheric Administration, is planning a model demonstration for weather radio stations, as a part of the national flash flood program.

NOAA is coordinating its efforts with the Appalachian Regional Commission to develop a prototype system titled IFLOWS for Integrated Flash Flood Observing and Warning System. The program would draw on a network of cooperative observers, a significant number of radio reporting rain gauges, a variety of other automated sensors, and microprocessors at the county level to provide quick assimilation and analysis of local data. An areawide radio communications network is to be used to collect and transmit data to the State level. A minicomputer in the State emergency operations center would provide furhter analysis and would control communications to and from the National Weather Service and other concerned emergency services organizations.

Funds for weather radio stations have been deleted from the President's budget for each of the last 2 fiscal years. Accordingly, I strongly urge that $250,000 be included in the fiscal year 1981 State, Justice, Commerce, the Judiciary Appropriations bill to enable the purchase, installation, and initial operation of IFLOWS weather radio stations in West Virginia. These funds are needed to protect the lives of West Virginians, who live in one of the most highly flood-prone regions of our country.

Your careful consideration of this matter is appreciated.

With kind regards.

Sincerely yours,

ROBERT C. BYRD,
U.S. Senator.

Would the witnesses comment on the contents of this letter and tell me what circumstances have changed to lead the Reagan Administration to seek to rescind the funds for the IFLOWS project, especially in view of the fact that the Carter Administration did not seek to rescind these funds? What assurances can you give me that the failure to establish the IFLOWS project will not endanger the citizens of the area to be served by the IFLOWS project?

The IFLOWS project has not been proposed for rescission. Informal price quotations for equipment have been obtained. Formal order is expected to be cleared by the end of April. Equipment is expected to be delivered 12 months after the vendors receive the order. The console equipment and the transmitters will be installed by State of West Virginia personnel through a cooperative agreement. Operation is expected at the end of Calendar Year 1982.

QUESTIONS SUBMITTED BY SENATOR CHILES

Agricultural Weather Services

What Agricultural Weather Services does the National Weather Service (NWS) now provide to the nation?

The present NWS Agricultural Weather Service provides specific information to approximately one-third of the country. These services include local weather observations for the farming areas,

weather forecasts tailored to current farming operations, and advisories to state extension services and farmers. The forecasts of such elements as drying conditions, amount of precipitation, and surface wind are issued daily as additional products by Weather Service Forecast Offices in the service area. In addition, four Agricultural Weather Service Centers (AWSC) manage the collection of observations and issue agricultural weather advisories. This program is concentrated in the central and southern states, with a number of Weather Service Offices in the West providing similar services on a much more localized scale.

What is the cost of the program and the number of federal employees?

The FY 1981 Budget provides 91 positions and $4.615 million. The FY 1982 Budget Requests reduce this to 71 positions and $4.285 million as a result of closing certain Weather Service Offices, the conversion of Weather Service Forecast Offices to Weather Service Office status, and the elimination of the Fruit Frost Forecast and Advisory Program from the basic NWS Agricultural Weather Services Program.

What deficiencies are there in the present service program from the viewpoint of farmers and ranchers?

The major deficiency is the limited geographical coverage. Where the agricultural service is available, farmers and ranchers site the need for a greater density of weather observations in agriculturally represtative locations, the full-time attention of dedicated meteorologists to the developing weather situation and its potential effects on local agriculture, and the provision of concise, non-contradictory advice on ways to mitigate or exploit the expected weather conditions. These deficiencies are of concern to the agricultural production segment of the economy, in their efforts to mitigate the increasing costs of maintaining production levels that rose, for example, roughly 10 percent above inflation in 1978 and 1979.

What plans does the NWS have for expanding the Agricultural Weather Service? What would be the estimated resources needed (fund and manpower)?

The NWS has completed plans that would expand its Agricultural Weather Services program by making use of the four existing AWSC's and establishing Agricultural Weather Service Units (AWSU) at nine existing offices. Each of these 13 offices would be responsible for an agriculturally homogeneous region roughly four states in size. The estimated resources needed are 31 positions and $4.6 million of continuing base funding. Each AWSU would have a dedicated staff of meteorologists equipped with processing and communications capabilities to provide full weather services to farming. In addition, a meteorologist would be designated at each Weather Service Forecast Office (WSFO) to coordinate the AWSC's agricultural adaptations of the WSFO's public forecast.

Observation networks would be upgraded to provide nationwide measurements of such elements as soil temperature and dew duration. Automated forecast guidance would be developed to pinpoint the weather elements that affect current agricultural operations. Each AWS office would issue specific agricultural weather forecasts and general advisories for farming in their region, and the observed and forecast agricultural weather data for

its area would be merged with basic NWS weather information into an automated database at each AWS office, for use in crop/weather growth models and Integrated Pest Management operations.

The estimated resources needed are 31 positions and $4.6 million of continuing base funding.

Why can't the USDA provide Agricultural Weather Service? What other arrangements have been considered? Can't private meteorologists provide weather services to farmers and ranchers?

It is conceivable that the Department of Agriculture could establish the field structure, real-time data processing and communications capabilities, and corps of trained meteorologists that are necessary to provide routine agricultural weather services. However, such a program would entail a considerable new effort, as well as additional funding and staff, and would largely duplicate existing NWS Agricultural Weather Service programs that could be enhanced at far less cost to the taxpayers as part of the NWS on-going weather service to the general public.

Other arrangements that have either been tried or considered include:

The Advisory Agricultural Meteorologist Program, where one NWS meteorologist was assigned to each State's Land Grant University. This was tried in the sixties in a number of states. It accomplished some service to state agencies but provided only limited routine service to farmers.

The Land Grand University Team concept, where DOC and USDA would fund two state employees to provide weather information advisories. The drawbacks in this concept are the omission of dedicated meteorologists from the preparation of forecasts, and the limited hours of operation and lack of backup capabilities.

A major agricultural weather center, where agricultural weather forecasts and advisories would be issued for the entire nation. This arrangement would not be able to respond to farmers' day-to-day needs over the wide variety of operations simultaneously underway in the many agricultural regions across the country.

Private meteorologists could provide limited weather services to individual farmers and ranchers whose unique requirements for totally localized data, special forecast and impact models, or other special advice go beyond the basic products of the NWS Agricultural Weather Service Program.

Fruit Frost Program

What will be the impact of the elimination of the fruit frost program? What services will be provided to fruit and vegetable growers in the future?

The basic impact will be that certain segments of the industry, the citrus growers in particular, will no longer have available site-specific temperature forecasts and other similar unique services. They will have the routine minimum temperature forecasts that are part of the general public service. Also, there will be some impact on other than citrus producers in that, when not supporting the fruit frost season, the NWS staff provides more detailed and

dedicated agricultural weather services to the general agricultural industry in the local areas. This added service would no longer be available.

Although the specific Fruit Frost Program is being eliminated, the more general agricultural forecast and advisory service and the general public weather forecasts and warnings prepared now by the National Weather Service will continue to be available for use by the citrus and vegetable growers. Appropriate Zone Forecasts issued by the nearest Weather Service Forecast Office for the areas involved include both maximum and minimum temperature forecasts. These forecast products are presently used by growers in many areas of the country not directly served by the Fruit Frost Program.

Questions Submitted by Senator Andrews

Q. In 1981, a new program was begun in NOAA, the Cumulus Dynamics and Microphysics Program (CDMP), and such studies as Precipitation Augmentation for Crops Experiment (PACE) in Illinois, and the federal/state cooperative programs of Utah and North Dakota were dropped. Why is NOAA developing in-house studies such as CDMP in FY81 and FY82 the Ice Crystals Processes (ICP) study at the expense of state participation?

A. The CDMP was the first of a series of planned initiatives to redirect NOAA's weather modification research program and available resources back to basics in an attempt to provide the physical understanding needed to place weather modification on a firm scientific basis. The ICP is the second. The Weather Modification Advisory Board report and the Secretary of Commerce weather modification report recommended that the Federal program concentrate on learning more about the atmosphere itself. The two basic scientific problems cited as particularly important were the interactions between cloud microphysics and cloud dynamics and the origin and initial growth of ice in natural clouds. NOAA has given highest priority in its weather modification research to these two problems. The CDMP and ICP programs involve NOAA scientists but extensive outside participation is essential if the programs are to succeed. The CDMP has solicited proposals from university and private sector research groups, and some research proposals have already been funded.

Q. The Federal/State Cooperative Weather Modification Design has input and support from scientists from all areas of the nation. Why did NOAA drop this program in its FY82 budget?

A. As part of the Federal/State Cooperative Program, NOAA contracted with Colorado State University (CSU) to design a program to assess the effectiveness of operational cloud seeding conducted in North Dakota and Utah. The design study involved university scientists to examine each link in the chain from hypothesis to response assessment. The products of the CSU study formed the basis of the 1981 winter and summer evaluation projects conducted in Utah and North Dakota. As discussed in the previous question, the decision not to continue the state evaluation programs was based on research priorities and budget constraints.

Q. It is my understanding the CDMP is underfunded to accomplish the goals set for it in its program development plan. Is the ICP program a method of adding money to the underfunded CDMP program?

A. We are confident that the main objectives of the CDMP can be achieved with available resources. An operations plan has been developed which describes the measurements and other research activities to be conducted in the first CDMP field program in FY 1983. The plan anticipates collaboration from other science agencies, including DOI, NSF, and the National Center for Atmospheric Research. Representatives from these agencies have participated in the planning of CDMP and have indicated their intent to contribute resources to the field program.

The ICP and CDMP are separate programs with separate objectives. However, there will be collaboration between the two programs at the CDMP field site in Florida in the summer of 1983. We believe that this is a cost-effective way for the ICP to obtain essential data and that both programs will benefit by working together.

Q. The research being planned under the ICP study is very timely to states which are conducting or have plans to conduct state weather modification programs such as North Dakota, Utah, Colorado, and Oklahoma. Could such research as proposed by the ICP be conducted through cooperative efforts as the federal/state program?

A. The long-term program objectives of the ICP are to (1) understand the origin, growth, and concentration of ice particles in natural and seeded cloud systems; (2) understand the role of cloud ice processes in regulating precipitation efficiency; and (3) develop realistic measures of the ice forming potential of natural clouds. The ICP will include laboratory investigations, numerical modeling studies, and periodic field experiments associated with convective, orographic, and cyclonic cloud systems. This knowledge will lead to improved predictions of precipitation from clouds of several types and will provide a basis for assessing their potential for modification through seeding with ice nuclei.

It is not feasible to conduct this research within the context of a particular federal/state program. The objective of the ICP field experiments is to obtain research quality measurements using highly specialized instruments not normally used in state operational seeding projects. Also, the researchers will need to be able to have control over seeding activities and be free to move to new sites or cloud types as results dictate. The field effort in the first year of ICP will serve to test combined airborne and ground-based, remote sensing measurement systems. In subsequent years, this program will collaborate with other field measurement programs such as CDMP and those of the Bureau of Reclamation. As mentioned earlier, all phases of the research will involve non-NOAA participation.

Q. With the demise of the HIPLEX program of Interior, is it not urgent for NOAA to develop a needed summertime program such as federal/state cooperative program to fill the gap created?

A. The CDMP is NOAA's attempt to develop a scientific basis for summer convective cloud modification. Evaluation of operational cloud seeding (the objective of the federal/state cooperative program) is an important goal, but we believe that fundamental investigations such as CDMP and ICP will advance the field more rapidly than attempting to evaluate present cloud seeding operations. Consequently, these programs have highest priority in our weather modification budget.

Q. It is my understanding in reviewing the weather modification line items in the NOAA budget that NOAA is spending approximately $5.0 million in FY82 for its Research Flight Center. What active role do these aircraft have in weather modification activities in the states? When do you plan to seed the next hurricane? Why do you budget all the in-house aircraft expenses from weather modification? Is it correct that one-half of your weather modification efforts are expended in an area which you have no immediate plans for implementation?

A. The Research Facilities Center (RFC) has three fully instrumented research aircraft (two WP-3D's and one WC-130B) with unique capabilities to make precise measurements of meteorological and oceanographic parameters over large areas. These aircraft are designed for long-range and long-distance missions, such as hurricane reconnaissance and research. Therefore, these aircraft are not normally used in weather modification activities in the states. However, they have been effectively and economically employed for cloud physics and other studies when their special capabilities are not available from other research aircraft.

Even though no hurricane has been seeded since 1971, hurricane modification research has continued and progress has been made. Because of the crucial need for more understanding of the physical processes involved, no experimental seeding of hurricanes is planned for several years, but measurements, analysis, and modeling studies will continue. Since 1977, when the RFC research aircraft became available, hurricanes have been penetrated to make detailed measurements in the high-energy cores of the storms. Analysis and evaluation of the resulting data have provided significant insight into the structure of and processes in mature hurricanes. These have led to new concepts which have important ramifications for both hurricane prediction and modification. The aircraft also provide data on storm position and structure to hurricane forecasters in Miami in real time through satellite communication links.

Prior to FY 1974 the RFC was in the budget subactivity of hurricane and tornado research. In FY 1974, with a major increase of $8,765K, the modernization of the RFC began. The major purpose of the modernization program was to support NOAA's hurricane modification program. Therefore, the RFC was budgeted under the weather modification activity. Since then, the hurricane research program has been one of the largest users of the RFC, but the unique capabilities of these aircraft have made them valuable for many research problems, including climate processes, air-sea interactions, and severe storms.

More than half of NOAA's weather modification research is directed toward achieving a reliable technology for rainfall augmentation. NOAA itself has no plans to implement this technology. Our aim is to develop a sound scientific basis for practical weather modification, including confirmation of hypotheses by experimental field projects. The weather modification technology which is then developed would be transferred to other government agencies or to the private sector for operational use.

Q. It is my understanding that university and private atmospheric research aircraft are now available, is NOAA making maximum use of these existing capabilities to conduct their research programs?

A. Yes, university and private atmospheric research aircraft are used for research programs whenever they can be used more effectively or efficiently than NOAA's aircraft. NOAA has made extensive use of university and private aircraft during the entire course of the Florida Area Cumulus Experiment, at its National Severe Storms Laboratory in Oklahoma, and elsewhere. We anticipate continued use of contract aircraft in the CDMP, ICP Program, and other programs, whenever the smaller well-instrumented aircraft are more cost-effective.

Q. After all the studies and reports of the past 20 years which call for an increased focus on the national level in weather modification does NOAA perceive a public concern for weather modification in this nation? What is NOAA's plan for the next 10 or 15 years in weather modification?

A. NOAA does not perceive a general public or Congressional concern or support for weather modification at this time. Analyses of weather modification activities in the United States reported to NOAA under Public Law 92-205 show a decline in public and Federally sponsored projects over the past three years. Several bills have been introduced in Congress to establish a national program in this field, but none has passed into law. However, NOAA agrees with the thrust of past studies that recommend a strong national research program because of the potential for benefit from an improved technology of weather modification. Therefore, our goal is to develop reliable, economically beneficial, and environmentally and socially acceptable weather modification technologies to assist with water management and storm mitigation.

NOAA's plan for future research is to give highest priority to addressing the obstacles to progress that are common across the field of weather

modification. We will carry out a research program of integrated measurements in the atmosphere, laboratory studies, and numerical modeling to obtain understanding of physical processes involved and develop a transferable technology of weather modification. NOAA's program for CDMP and ICP are geared to a 10-year effort.

Q. Will NOAA continue its long-range commitment to the airborne gamma radiation snow survey program?

A. Yes. NOAA plans continued support at present levels for the Airborne Snow Survey Program for the foreseeable future. We hope to expand the current program to include other areas in the northern Great Plains. In addition, we think the aerial gamma surveying techniques for soil moisture measurement offer potential benefits for river forecasting beyond predictions of snowmelt runoff. We are developing the plans for these other aspects of the program.

MARITIME ADMINISTRATION

STATEMENT OF SAMUEL B. NEMIROW, ASSISTANT SECRETARY FOR MARITIME AFFAIRS

ACCOMPANIED BY:

RUSSELL F. STRYKER, ASSISTANT ADMINISTRATOR FOR POLICY AND ADMINISTRATION

MASON G. NOTTINGHAM, DIRECTOR, OFFICE OF BUDGET, MARITIME ADMINISTRATION

NANCY A. RICHARDS, DIRECTOR, OFFICE OF BUDGET

PREPARED STATEMENT

Senator WEICKER. Our next request—is that of the Maritime Administration. The amount requested is $85,389,000, a decrease of $150,931,000 from the 1982 base, provides for 1,140 permanent positions.

Appearing on behalf of this request is Samuel Nemirow, Assistant Secretary for Maritime Affairs. We will be pleased to go ahead and accept your statement in its entirety in the record.

[The statement follows:]

STATEMENT OF SAMUEL B. NEMIROW

I appreciate this opportunity to present the Maritime Administration's request for appropriations for fiscal year 1982. The Assistant Administrator for Policy and Administration, Russell F. Stryker, is with me today to assist in answering any questions you may have concerning the proposed budget.

In conformance with overall policies to reduce Federal spending and to stretch-out construction schedules, the President's request for the Maritime Administration reduces the 1982 Carter budget request forwarded to you in January. The Maritime Administration's revised request for 1982 appropriations totals $502,537,000. Most of the $115,884,000 decrease from the January estimates results from withdrawal of the previous request for $107,000,000 in Ship construction subsidy appropriations for 1982 which is offset somewhat by the proposed deferral from 1981 to 1982 of $92,000,000 in ship construction budget authority. The 1982 request for Research and development funds is $12,910,000. A rescission of 1981 Research and development appropriations amounting to $2,500,000 is proposed, leaving $13,800,000 available for 1981. Thus, the revised request for 1982 is $890,000 less than the revised request for 1981. The Operations and training revised estimate for 1982 is $72,479,000 which is greater by $6,929,000 than the amount appropriated for 1981. The operating-differential subsidy amount requested is $417,148,000 or $83,952,000 more than was provided in the 1981 appropriation. Consistent with Administration efforts to reduce Federal intervention in the credit market, the ceiling on 1982 ship financing guarantee commitments has been reduced to $1,050,000,000 and to $900,000,000 in 1981.

The Administration plans to conduct a full review of maritime policies which will take into account the shipbuilding capacity

worldwide, the numbers of U.S.-flag and foreign-flag vessels participating in world trade and the impact that construction subsidies have on maintaining a shipbuilding mobilization base. Consistent with Administration commitments, the maritime policy developed will recognize fully the impact of planned increases in naval shipbuilding, ways to increase commercial participation in military support functions and the effect that new tax policies will have on improving the competitiveness of the U.S. merchant marine.

The 1982 revised requests by appropriation are:

- o $417,146,000 for Operating-differential subsidies;
- o $12,910,000 for Research and development activities; and
- o $72,479,000 for Operations and training activities.

The Merchant Marine Subcommittee of the House Merchant Marine and Fisheries Committee and the Subcommittee on Merchant Marine of the Senate Commerce, Science and Transportation Committee are currently conducting hearings on legislation to authorize these appropriations.

I would like to proceed now with specific requests by appropriation.

SHIP CONSTRUCTION

The President's request continues support for the maritime industry during a period when alternatives to existing maritime policies are under consideration. The revised CDS program will continue at the rate of two new ships per year 1981 and 1982. The Administration anticipates that the expanded Navy construction program will significantly improve shipyard activity. The President's budget provides for the deferral into 1982 of $92,000,000 from 1981. This will leave $153,211,000 for 1981 and will provide sufficient funds to subsidize the construction of two ships in 1982. Funds not required for the

construction contract should be sufficient to cover 1982 change orders under existing contracts.

OPERATING-DIFFERENTIAL SUBSIDIES (ODS)

The request for 1982 operating-differential subsidies totals $417,148,000, the same amount that was requested in the January budget. This is $83,952,000 more than was provided in the 1981 appropriation for ODS. The major portion of the increase $62,575,000, is attributed to the net effect of estimated changes in foreign and domestic costs. Further, costs for an increased number of ship years of subsidized operation are estimated to amount to $2,844,000, and our schedule for final payment of costs against previous year operations results in an increase of $16,875,000. Finally, the 1981 requirements were partially funded by a carryover from 1980 of $1,658,000. Since no similar carryover is projected for 1982, the amount has to be accounted for in the appropriation.

RESEARCH AND DEVELOPMENT

The 1982 appropriation authority request for Research and development is $12,910,000. A rescission of $2,500,000 is proposed for 1981, which would leave $13,800,000 available for that year. Thus, the revised request for 1982 is $890,000 less than the revised request for 1981. In 1982, the requested appropriation will fund a lower level of independent and basic research, and will focus on applied research projects that provide immediate benefit to the user.

In the research areas of advanced navigation and communications and industrial plant vessels, existing projects will be completed with no new contracts awarded.

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OPERATIONS AND TRAINING

The $72,479,000 requested now for 1982 is greater by $6,929,000 than the amount appropriated for 1981. Of this increase, $3,759,000 represents pay and other built-in cost increases, and $3,170,000 is the net increase that results from a variety of program changes, including the following:

- o There is a net increase of $220,000 in the amount requested for the National Defense Reserve Fleet. This reflects an increase of $1,700,000 to provide for dredging at the James River Fleet site, offset by a decrease of $1,480,000 for Ready Reserve Fleet maintenance. Actually, this is only a bookkeeping decrease because the Maritime Administration would continue to perform the maintenance function, but funding would be through the Navy budget on a reimbursable basis.
- o An increase of $3,500,000 is requested in order to double the funding for ongoing maintenance and repair of schoolships. It is expected that this doubling of the maintenance and repair amount will provide the ships with necessary performance capability.
- o The proposed 1982 authorization also includes an increase of $300,000 to institute a program for control of asbestos hazards.

This concludes my prepared statement, Mr. Chairman, and I will be glad to answer the Committee's questions.

BUDGET REQUEST

Senator WEICKER. You may synopsize.

Mr. NEMIROW. Thank you, Mr. Chairman.

I am pleased to appear here today to present the Maritime Administration's request for appropriations for fiscal year 1982.

I have with me Mr. Russell Stryker and Mr. Mason Nottingham, who will assist in answering any questions you may have on the total budget.

I will try to give you a brief synopsis of this statement as you requested.

1982 BUDGET HIGHLIGHTS

In conformance with overall policies to reduce Federal spending and to stretch out construction schedules, the President's request for the Maritime Administration reduces the 1982 Carter budget request forwarded to you in January.

The Maritime Administration's revised request for 1982 appropriations totals $502,537,000. Most of the $115,884,000 decrease from the January estimates results from the withdrawal of the previous request for $107 million in the appropriations for 1982, which is offset somewhat by the proposed deferral from 1981 to 1982 of $92 million in ship construction budget authority.

There is also a proposed rescission and reduction in the 1981 and 1982 research and development request. The 1982 operations and training request is greater by $6,929,000 than the 1981 appropriation. The operating differential subsidy amount requested is $417,148,000.

Finally, as to the numbers, the administration in its efforts to reduce Federal intervention in the credit market, has established the ceiling on 1982 ship financing guarantee commitments of $1,050,000,000 and has reduced the 1981 ceiling to $900 million.

I would only like to make one other statement for the record, which I think is pertinent here, and that is that the administration plans to conduct a full review of maritime policies which will take into account the shipbuilding capacity worldwide and the number of U.S.-flag and foreign-flag vessels participating in world trade and the impact of construction subsidies on maintaining a shipbuilding mobilization base.

Consistent with administration commitments, the maritime policy developed will recognize fully the impact of planned increases in naval shipbuilding, ways to increase commercial participation in military support functions, and the effect new tax policies will have on improving the competitiveness of the U.S. Merchant Marine.

If you will permit me, I would like to just present the rest of my statement for the record as you have indicated. I would be happy to answer any questions that you might have.

Senator WEICKER. Let me get right to the last point that you made.

I gather then that this review is just beginning; is that correct?

Mr. NEMIROW. Yes; we have had some preliminary discussions. We have prepared some drafts of the outlines on issues that might be considered and we are starting more definitively on this review with a Department of Commerce meeting tomorrow afternoon.

Senator WEICKER. Since there is no specific use identified for these funds, wouldn't it be prudent for the committee to rescind this $92 mil-

lion to allow the Maritime Administration to come back with the supplemental request for fiscal year 1982 once the maritime policies have been revised?

Mr. NEMIROW. The concept at the moment is to maintain a shipbuilding subsidy program in 1982. There is projected for the out years from 1983 through 1986 a program of $100 million a year. That is specifically being reviewed in this process. It is the position that the administration is taking, and they have looked at the possibility of rescinding existing authority, the $92 million which currently exists in the 1981 budget and have decided to maintain that to keep a level of shipbuilding through the subsidy program in place, at least through this review process which will take place in fiscal 1981.

Senator WEICKER. When can we expect to have your report?

Mr. NEMIROW. I am really not in a position to answer that at the moment.

We are meeting on strategies, policies, outlining, and timing for the preliminary meetings, as I indicated, tomorrow.

Senator WEICKER. I wonder. It really does impact. I am most anxious. I might add I support the administration in conducting such a review. It is absolutely necessary. On the other hand, it really does impact also on the decisions of this committee as to funding.

We don't want to go through a whole exercise as far as Maritime Administration is concerned to find out a whole different set of policies and guidelines apply 6 months from now. You probably are going to arrive at some new policies.

Mr. NEMIROW. I think as to the $92 million in fiscal 1982, that that is fairly defined and accepted by the administration. I think it is important for the business community to know that there is a shipbuilding subsidy program in place. Many business decisions concerning ship construction, conversion, and modification, have to be made well in advance of the actual commitment of Government funds. We are now in the process of dealing with some operators who are prepared to enter into construction contracts which will be executed subject to outlays in fiscal 1982. I think for planning purposes, particularly in the business community, as well as for governmental purposes, funding of the $92 million is entirely appropriate.

Senator WEICKER. The administration has proposed a deferral of $92 million in fiscal year 1981 for construction differential subsidies. The action assumes that two ships rather than four will be contracted for in fiscal year 1981, and that two ships will be contracted for in fiscal year 1982.

This proposal replaces the Carter budget which planned for six vessels in the 2 years. The deferral message also states that this action "may preclude the Government subsidization of pollution retrofits on privately-owned subsidy-operated tankers." What further detail can you give us on the estimated effects of this deferral?

Mr. NEMIROW. The amount of funds required for pollution retrofit is a fairly limited number. What we have on hand at the moment is around $7 million in requests.

As you know, the convention is coming into effect and the Coast Guard has new standards which go into effect for certain sized tankers

on July 1 of this year. We believe, given the fact that most of these vessels will be going in the yard in August for the conversion work required and not coming out until October, that we will be able to fund those retrofits in the October timeframe within the $92 million ceiling.

Senator WEICKER. What effect will the proposed rescission of $2.5 million for maritime research and development efforts have on these programs? Are there any projects already planned which will be limited?

Mr. NEMIROW. We will not be able to follow through on some of the planned projects. However, we are reorganizing a bit in our research and development area. We are going to put greater emphasis on applied research as opposed to basic and independent research in order to get as much bang for the buck as we can, given the fact of this rescission which we expect to be enacted.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I have further questions here, Mr. Secretary, which I will submit to you for response for the record, many of which are really in the nature of the policy questions. That is one of the reasons I feel I should not go ahead and ask them in view of the fact you are in the middle of developing a policy, but in any event, I would appreciate your responding to them as best you can.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Deferral and Rescission

Are we serious about building a new fleet or are we just contracting for two more vessels in 1982 to provide financial assistance to an ailing industry?

The Administration is projecting a funding level for construction differential subsidy of $100 million for each year in the period 1983-1986, pending a review of the maritime policy alternatives that will address all aspects of the maritime industry, including the size and age of the fleet and its several segments. It is too early to say what the review will conclude with respect to a new fleet. As to shipbuilding, the Administration foresees that a significant level of shipyard activity will be generated by the expanded Navy shipbuilding program. The two-ship level of construction differential subsidy funding in 1982 will continue the program at a steady but reduced level and, for now, will assure a modest continuum of commercial ship construction.

Coordination with Navy

What coordinating functions have been conducted by your office and the Secretary of the Navy to determine the size and make-up of both this country's maritime shipbuilding base and actual private maritime fleet? What coordinating missions are planned?

The Navy and MarAd continually work together to evaluate the U.S. shipbuilding and shipyard repair capability to meet contingency mobilization requirements. In 1977, MarAd in cooperation with the Navy published a detailed study which evaluated our shipyard requirements in 1978 and projected for 1984. This study was updated in 1979 to reflect the changes in our capability to meet the shipyard requirements for the critical first 90 days. As recently as January of this year, MarAd and the Navy contributed to a study conducted by the Institute for Defense Analyses on the U.S. shipbuilding capabilities to meet current and surge demands for new ship construction to meet various levels of Navy construction.

The Navy and MarAd coordinate with each other and with other DoD agencies in developing requirements for numbers and types of ships in the privately-owned merchant fleet, for defense features necessary for those vessels, and on development of plans for marshalling and wartime use of the vessels.

At the staff level, Navy and MarAd are now working together to reevaluate the shipyard mobilization capability and determine the effect on the mobilization base resulting from changes in the current programs. At this time, Navy, MarAd, and JCS staffs are engaged in ship requirements work and emergency planning. The new Secretary of the Navy has indicated his desire to meet

with the Assistant Secretary of Commerce for Maritime Affairs. When Administration staffing of Assistant Secretary positions in the Navy and Commerce Departments is sufficiently complete, that meeting will be held. The work presently underway at the staff level will be on the agenda.

Ship Construction

Reduction of CDS Rates:

What is MarAd and the shipbuilding industry doing to reduce CDS rates? How successful have you been in reducing these rates?

There are two key aspects that must be discussed in order to answer this question. One aspect is primarily economic in nature whereas the other relates to technological differences between U.S. and foreign shipyards. The economic factors will be discussed first.

The CDS rate for each new shipbuilding project results from two independent findings, namely: (1) a fair and reasonable domestic price determination and, (2) a fair and reasonable foreign cost determination. The domestic ship price is a reflection of the available competition between U.S. shipyards having an interest in building the type of ship(s) proposed and other market conditions such as current prices for raw materials; the availability of skilled and semi-skilled labor; the interest rates on borrowed working capital and plant investment capital; and the anticipated inflation projections for both material and labor expenditures throughout the entire building period. The foreign cost determination must also recognize competition and market pricing conditions. In this case foreign competition is a reflection of world-wide orders placed for similar ship types and recognition of the individual countries receiving these orders. Among the factors influencing the foreign ship price determination is the currency exchange rate at the time of contract signing. A weak U.S. dollar raises the foreign price, after converting the ship price to dollars, while a strong dollar lowers the foreign purchase price.

With regard to technological difference between U.S. and foreign shipyards and the influence of this aspect on CDS rates, MarAd and the U.S. shipbuilding industry have spent considerable effort to first identify and then work on narrowing the gaps where they exist. One of the most extensive improvement programs presently underway is the MarAd/Industry cooperative National Shipbuilding Research Program. Among the most significant areas receiving attention in this program are: shipyard management improvement, organization improvements, work procedures and hardware improvement. Major projects being implemented include the following:

- Modular construction (zone construction)
- Development of procedures for accuracy control
- Development of performance measures
- Computer integration of management/systems
- Facilities improvement

Another major initiative that should achieve cost reduction is the establishment of National Consensus Shipbuilding Standards within the American Society for Testing and Materials (ASTM). Currently 90 national standards are in the development process which cover such areas as: piping, instrumentation, painting, specifications and machinery.

While the foregoing discussion has only highlighted some of the MarAd/Industry efforts that are aimed at improving U.S. productivity and hence reduction of CDS rates, it should be understood that there are many equally important economic aspects that influence the CDS rate that cannot be eliminated by improvements in technology or management alone.

With respect to the question concerning success of the industry in reducing the CDS rates, no one can with certainty give a precise quantitative answer to such a question. What is known, however, is that foreign technology is constantly improving and the U.S. industry, with all of the variables influencing domestic and foreign prices, has consistently been able to stay within the statutory CDS ceiling and on occasion be substantially below the maximum. If it were not for the MarAd/ Industry efforts the CDS rates would in all likeihood be significantly higher than the current differential.

CDS Impact

What impact does the CDS program have on the domestic shipping industry compared to non-CDS and DOD shipbuilding?

The active shipbuilding base in the United States is composed of 24 major shipyards. This number excludes Sun Shipbuilding, which has announced that it is no longer in the ship construction business. In these 24 yards, about five percent of the production employees are engaged in CDS construction, 55 percent in Navy construction and 40 percent in unsubsidized commercial modification and non-ship work. However, about 20 percent of the building positions in these yards are occupied by CDS construction. Navy construction involves much larger labor requirements than does commercial construction.

Since the Merchant Marine Act of 1970, the Maritime Administration has awarded construction-differential subsidy (CDS) contracts to build 83 new merchant vessels valued in excess of $4.6 billion. Construction of these vessels has provided approximately 153,000 work years of employment in 13 of these 26 shipyards, and an equal number of work years for allied marine supply industries. Some of that work is still under way. CDS awards under the 1970 Act have also included the conversion of 56 existing cargo vessels and tankers resulting in approximately $212 million in shipyard work.

The CDS program and the domestic fleet program have been on average roughly equivalent over the past ten years, both in terms of the total number of new construction vessels and major conversion, and in terms of contract value. In comparing the two programs, however, it should be noted that the CDS program had

the much greater impact on the domestic shipbuilding industry in the early 1970's whereas the private program currently has the greater impact. Given the present reduced levels of CDS funding, it is likely that Navy and unsubsidized commercial construction will have a more significant impact, in terms of shipyard revenue and workforce requirements, for the next few years.

With Navy Build-up, is CDS Still Needed?

Before the House Subcommittee on Merchant Marine, Navy officials recently testified that 15-19 private shipyards should be maintained for national security purposes. How many private shipyards are there now? How many shipyards would there be if CDS was eliminated? With the Navy shipbuilding goal of increasing the size of the fleet from 456 - 600 vessels, is it necessary from a national defense or national security perspective to continue providing CDS?

There are currently 24 major U.S. privately-owned shipyards engaged in the construction of ships or actively seeking construction contracts, although some are in large part supported by repair work. Of these, seven are engaged solely in the construction of Navy ships, twelve are constructing only merchant vessels and four construct both Navy and merchant ships. One shipyard is not constructing ships but continues to do ship repairs. Sun Shipbuilding has stated that after the completion of its present ship orders it will terminate its shipbuilding activities and will concentrate on ship repair business. Therefore, Sun is not considered in the numbers given above.

The 15-19 shipyards mentioned by Navy refer to those yards necessary for wartime ship construction. Actually, some 53 shipyards are required for repair, activation and construction work during a major war. This number includes the 24 major yards mentioned above, the 8 naval shipyards, and 21 yards which are primarily repair facilities. Some of these latter yards are also capable of constructing small vessels such as tugboats.

It is not possible to predict the number of shipyards that would go out of business if CDS were eliminated. Even with an increase in the Navy fleet to 600 ships, the commercial yards would be affected by the loss of CDS. Of the 24 shipyards, only 13 are capable of constructing Navy combat and amphibious ships. The remaining shipyards are, for the most part, capable of building Navy support ships. Our estimates show that the increase in Navy shipbuilding, while very helpful to the shipyards, could not completely make up the loss of orders that would be caused by elimination of CDS. Commercial construction over and above that generated by the domestic shipping industry is necessary to keep the shipbuilding base at its present level.

National Defense Requirements

CDS Vessels are Only Minimally Adequate for Defense Purposes:

For national defense purposes roll-on/roll-off, breakbulk, and container vessels are preferred by DOD. However, over half of the vessels built with CDS since 1971 are of other types. Why do we use CDS to build these other types of vessels when our merchant fleet, for national defense purposes, is only minimally adequate? Does DOD have a requirement for the dry bulk ships and product carriers that the 1982 program includes? What is the rationale for funding these type of vessels?

The merchant fleet is required for national security service as well as for national defense service. By national defense service we mean direct support of military operations: carrying unit equipment, ammunition, resupply cargo, and POL to a theater of operations. National security service entails carrying crude oil and other critical imports in wartime. Every ship built with CDS serves either a national defense or a national security purpose.

The ship types most needed for national defense service include the liner ship types noted in the question plus the barge carrier, another liner type, and product tankers capable of delivering military fuel. Of the ships built or contracted for since 1971, 83 in all, 49 are liners and tankers adapted for military fuel movement. The availability of suitable product tankers is a particularly critical issue at this time and is a matter of some concern to DOD.

The other CDS vessels built since 1971 are liquified natural gas (LNG) carriers (8), tankers in excess of 200,000 dwt (11), and other miscellaneous types, including three dry bulkers and two oil bulk ore carriers. All of these types contribute to the overall national security objective of moving essential imports, and some are adaptable to direct military support. The dry bulker can be used to carry military equipment and resupply without adaptation and when equipped with decks and cranes, both of which have been contemplated, it can serve quite efficiently in this role. This consideration, and this country's current near-total dependence on foreign flag shipping to move essential bulk imports, are significant reasons for the support of bulk ship construction.

Are More Dry Bulk Vessels Needed:

With the large number of dry bulk carriers and tankers in the Effective U.S. Controlled Fleet (American owned foreign-flag vessels), why is it necessary to subsidize the building of more dry bulk and product carriers? Doesn't the Secretary of Commerce have the power to requisition the Effective U.S. Controlled Fleet when the President declares a national emergency?

The present U.S.-flag foreign trade tanker fleet carries less than five percent of U.S. oil imports; the 17-ship U.S.-flag dry bulk fleet carries only about one percent of U.S. dry bulk

foreign trade. In time of war, the U.S. would be reliant on the importation of quantities of critical materials (such as crude oil, iron ore, and bauxite) much greater than could be carried by the U.S.-flag fleet. At present, we are forced to plan to use vessels of the Effective U.S. Controlled Fleet for this purpose. The questionable reliability of the EUSC makes it desirable that we have a U.S.-flag fleet, crewed by Americans, capable of carrying at least an appreciable portion of these critical imports.

Under Section 902(a) of the Merchant Marine Act, 1936, the President has the authority to requisition vessels owned by U.S. citizens whenever he "... shall proclaim that the security of national defense makes it advisable or during any national emergency ..." A declaration of national emergency is not necessary for requisitioning to take place. The President has not delegated his requisitioning authority. However, he does have the power, under this authority, to requisition ships of the Effective U.S. Controlled Fleet of vessels registered in Panama, Liberia, and Honduras.

Reliability of Fleet:

Over the years the reliability of the Effective U.S. Controlled Fleet has been questioned. What is MarAd's official assessment of the reliability of this fleet? If this fleet is considered unreliable, what steps has MarAd taken to increase the reliability of this potentially valuable national asset?

The vessels of the Effective U.S. Controlled Fleet, although owned by U.S. companies or foreign affiliates of U.S. companies incorporated under the laws of the United States, are crewed by foreign nationals. It is this fact that has caused the reliability of the EUSC to be questioned. It is conjectural whether these crews would object to sailing on a vessel employed by one of the belligerents in a conflict in which the home country of the crew was not involved.

We have been publicly assured by the companies involved that these vessels would be available for use in wartime and would report for use by the government when requisitioned. The ability of the government to control these vessels through the U.S. owner has never been tested, so we cannot be sure that the EUSC fleet is reliable; nor can it be characterized as unreliable. Because we lack sufficient U.S.-flag vessels to carry critical wartime imports of raw material, we are forced to rely on the EUSC to provide vessels for this purpose. We would prefer not to rely on the EUSC, rather, it is highly desirable that the U.S.-flag fleet contain enough American-crewed vessels to provide all our wartime shipping needs.

The Maritime Administration is working with the U.S. owners of EUSC vessels to ensure that contingency plans and operating procedures are in place so that the EUSC vessels can be requisitioned for government use in an efficient fashion. Beyond that, the steps that the government can take are limited. Since our plans call for the EUSC vessels to operate almost entirely in carriage of critical imports and in support of the U.S. wartime

civil economy, it is probable that a large fraction of the EUSC would be available for use. However, the assured control that would be inherent if these vessels were registered in the U.S. is strongly preferred.

Would Fifty Percent Response Do the Job for National Security?

If we assumed that the U.S. Government could count on 50 percent of the Effective U.S. Controlled Fleet during national emergencies, would this fleet along with the current U.S.-flag fleet and other vessels available to the United States be adequate to meet U.S. national security needs?

As of March 23, 1981, there were 439 tankers totaling over 47 million deadweight tons and 93 dry bulk and ore carriers totaling about 6 million deadweight tons in the Effective U.S. Controlled Fleet. If half of these vessels were available to augment the U.S.-flag tanker and dry bulk fleets in an emergency, the flow of critical imports of raw materials such as crude oil, iron ore, and bauxite, could be maintained at a satisfactory level. Some handy size EUSC tanker tonnage would also be available to augment the U.S.-flag fleet in direct support of military operations should such augmentation be necessary.

The EUSC fleet could not contribute at all for practical purposes to the militarily crucial tasks of deployment and dry resupply of military forces because it includes only a small handful of the liner-type vessels that are essential for these missions. In a NATO war, which would entail a calculated requirement for close to 800 liner type ships, the EUSC fleet could contribute only two vessels, both LASH's. In that situation we must rely on our NATO allies to provide the 400 liner vessels necessary to augment the U.S.-flag fleet.

Operating-Differential Subsidy

Reduced Dependence on ODS:

The Merchant Marine Act of 1970 envisioned a reduction in the liner operators' dependence on ODS. Has this happened? What has MarAd done to reduce the subsidy needs of U.S.-flag carriers?

Various features built into the 1970 Act have accomplished some reductions in operating subsidies. ODS outlays as a percentage of gross revenue generated by subsidized operators declined from a level of approximately 22% in 1971 to about 14% in 1978.

Two innovations included in the 1970 Act have acted to hold down rapidly rising operating costs. Both apply to wage costs and reduce dependence on wage subsidies. The first changed the language in Section 603 of the Act and helps to limit the vessel crew size because determinations as to the number of crew must now be made prior to the award of contracts for construction or reconstruction of vessels. Substantial progress has been made in this area in limiting the number of

seafarers, approved for subsidy purposes, as new, automated and high technology vessels are built. Another change to Title VI of the Act with regard to wages was the inclusion of a wage index system to calculate the wage subsidy. Under this system, subsidizable seafarers' wage increases are tied to a Bureau of Labor Statistics index for other industries.

A third change affecting the industry's dependence on subsidy, was the amendment to Section 603(b) to allow the parties in an ODS agreement to agree to a lesser amount of subsidy than otherwise provided for in the Act. In several instances the Government, with the cooperation of the operators, accomplished subsidy reductions in negotiation of new agreements by limiting the items for which ODS is determined. Various non-wage items (maintenance and repairs and insurance) have been eliminated, especially on higher productive vessels, for subsidy payment in accordance with certain new ODS agreements and renewals of other long-term contracts.

In addition, the construction of large, modern, efficient vessels, replacing several older vessels, has also provided for the reduction in operating-differential subsidy payments per unit of cargo moved aboard U.S.-flag vessels.

Carriers Paid for Prior Year Obligations:

Your budget states that "Additional (ODS) Payments are made for final settlement of prior year accruals as final data concerning actual U.S. and foreign costs become available."

How long after the close of the fiscal year is it before these final payments are made to liner and bulk carriers?

Final subsidy payments are settled two to three years after the period ends. The major delay in settling these costs is accumulation of foreign competition and foreign cost data on the flags engaged in U.S. foreign commerce. For example, final wage subsidy rates for liner vessels for 1978 are now being completed by the Maritime Administration staff and upon completion will be proffered to the operators for acceptance. Acceptance by the operator of its rates, approval by the Maritime Subsidy Board, contract amendments, final billings by the company, and processing for payment take up the rest of the time.

What is the effect of this waiting period on these carriers, especially during periods of high interest rates?

The amount and timing of final payments are approximately predictable, and they represent only a small fraction of total subsidy. Therefore, under normal conditions of operation, the timing of the payment under the existing system should present no major problem for the operator. However, when the conditions of business and trade reduce cash flow significantly, there are times when early settlement can help an operator to avoid the need for expensive borrowing.

In such circumstances, MarAd has frequently been able to provide relief, although not necessarily through the early completion of final payments.

What is MarAd doing to speed up these payments?

The subsidized operators have proposed that MarAd adjust subsidy billing rates on an interim basis when data such as final exchange rates and foreign-flag competitors become available so as to reduce the outstanding balances in the subsidy accounts. The Agency is studying the proposition of paying subsidy on this basis and the GAO Maritime audit staff is reviewing the viability of such a proposal.

Does MarAd Monitor Efficiency with ODS:

Section 606 of the Merchant Marine Act of 1936 provides that every ODS contract provide "that the contractor shall conduct his operations -- covered by his contract in an economical and efficient manner."

How does MarAd monitor the operators to assure that they are conducting their subsidized operations in an economical and efficient manner?

The regional offices of the Maritime Administration monitor actual performance of the operators. Financial results of operations are reviewed on a monthly basis for liner operators. In addition, a review is made of every operator's quarterly financial statements and their yearly financial statements. There are specifications as to what MarAd expects these statements to contain and the yearly statement, which is reported on MarAd Form MA-172, is highly detailed. In addition, ODS operators with mortgage guarantees under Title XI are subject to a semi-annual Early Warning review. If any of these reviews, or an audit by MarAd, reveals that an operator is not conducting its operations in an economical and efficient manner, MarAd can take certain actions to induce the operator to correct the situation. These actions can vary from restriction of dividend payments under the ODS dividend policy of 46 CFR 283 or the invocation of restrictions under the Title XI covenants to, in a worst case scenario, cancellation of the ODS agreement. In addition, operators are contractually required to seek MarAd approval to engage in activities which are not in the ordinary course of business or which are not directly related to shipping. Thus, MarAd has ultimate control over any major transaction proposed by a subsidized operator.

Bankruptcies:

During the past several years, States Lines and Pacific Far East Lines, two subsidized liner operators, have gone bankrupt.

Are any of the remaining ODS operators experiencing financial difficulties? If so, what are you doing to help these carriers?

In the recent past, certain ODS operators have experienced periods of financial difficulty. However, the Maritime Administration has been able to take certain actions to assist these operators, resulting in an improvement in their financial condition. One of the tools available to MarAd is to expedite the payment of monies which are expected to be due the company after finalization of ODS rates for past years. ODS is paid initially on the basis of tentative rates, which are then subject to adjustment and finalization at a later date. On initial payments, the operator is paid 100 percent of the tentative wage rate and 90 percent of all other expenses. Thereafter, all the costs of a given year's operations are determined and compared against actual foreign costs for the same period and adjustment is made. In the past we have also allowed operators, such as Pacific Far East Line, to bill for their tentative rates on a monthly, rather than voyage, basis to facilitate the payment of the currently due subsidy under the tentative rates. Under the CCF program, we have also allowed operators to make withdrawals from the tax deferred fund to alleviate negative working capital problems.

In an effort to help subsidized operators sustain operations through periods of financial difficulty, the Maritime Administration works very closely with these companies and other creditors to enable all current obligations to be met. These arrangements have typically involved restructuring of existing debt obligations to terms more in line with project operations. The Maritime Administration's efforts have also been instrumental in facilitating the acquisition of needed working capital to cover ongoing expenses.

Subsidy to U.S. Lines:

Recently, U.S. Lines was approved for subsidy. Why did this company require subsidy after years of operating without it?

United States Lines (USL) was awarded a 20-year Operating-Differential Subsidy (ODS) in January 1981 to operate four vessels on Trade Route (TR) 5-7-8-9 (U.S. North Atlantic-United Kingdom, Ireland and Continental Europe). Farrell Lines Incorporated originally operated on a subsidized basis on TR 5-7-8-9 but assigned these rights to USL. The vessels USL operates on the North Atlantic were constructed in 1953 and 1954 and were reconstructed in 1970 and 1971. These vessels are less efficient than vessels used by foreign-flag competitors on TR 5-7-8-9. Since USL has lost the technological advantage it once enjoyed over the foreign-flag competitors, it was determined that subsidy was necessary to help USL maintain a viable operation on the North Atlantic.

What were the benefits to the United States of granting subsidy to U.S. Lines? How much subsidy will be required for U.S. Lines? Will this be in addition to the $417 million currently being requested for FY 1982?

U.S.-flag vessels carry less than one-third of cargo moving on TR 5-7-8-9. For example, during 1979, U.S.-flag vessels carried only 26.4 percent of the cargo on TR 5-7-8-9.

The amount of subsidy USL requires annually at the FY 1982 level is $8 million. Adjustments in the payment rate for 1982 will make it possible to accommodate this requirement in that year without addition to the $417 million. A further adjustment will be necessary in 1983 to make up the difference.

Maintenance and Repair: Why Must it be Performed in U.S.?

Maintenance and repair ODS is paid because the ODS operators must have their maintenance and repairs performed in the United States where the cost of this work is higher. The law requires this work to be performed in the United States in order to preserve and maintain a ship maintenance and repair industry.

How much does ODS maintenance and repair contribute to the industry?

Based on Census Bureau estimates of value of work done in 1978, maintenance and repair on subsidized vessels represented approximately 8% of all non-military work done in domestic repair facilities.

If ODS maintenance and repair was eliminated by not requiring subsidized operators to have their maintenance and repair performed in U.S. shipyards, would the U.S. maintenance and repair base drop below an adequate level for national security?

We estimate that the elimination of ODS for maintenance and repair and the accompanying requirement to perform repairs in the United States would have relatively little impact on the U.S. shipbuilding and repair industry or its capability to meet national security needs. The major sources of business for the repair industry are non-subsidized U.S. vessels as well as foreign-flag vessels, and we believe subsidized companies would continue to depend heavily on the U.S. repair industry even if repair work was not subsidized. U.S. shipping companies ordinarily have repairs performed in the United States, where there is a higher degree of familiarity with vessel design and where replacement parts are more readily available. Further, a domestic repair eliminates the potential for substantial crew expense that could be encountered with a repair overseas.

Research and Development

Why Do We Pay for Industry R&D?:

Why must the Government provide R&D for the U.S. maritime industry? Why doesn't the maritime industry do its own R&D?

Research on new technology and better productivity is vital to a healthy maritime industry, and this fact was recognized by the Administration and Congress when an enlarged R&D program was passed along with the Merchant Marine Act of 1970. We would prefer that

the industry conduct an aggressive research program on its own but it has not been able to generate the kind of revenues that would support such an effort. The industry is characterized by a number of relatively small firms, operating on slim profit margins, and few of them can support meaningful R&D staffs.

In the past decade, however, this industry has become closely involved with MarAd's R&D program, and they are now actively sharing in its direction and its funding. Cost-shared research has become common, with federal funding acting as the catalyst and as a way of assuring that the research results are spread throughout the industry. In this way the program has become the industry's own and they are assuming a larger responsibility for it. Just recently one of the groups that we established and funded on shipyard automation has decided to form a not-for-profit corporation which will soon be completely supported by industry contributions.

On the other hand, some research would not be done except by the Government. Work aimed at making merchant ships more usable as military transports, for instance, wouldn't be done by the private sector in any case. And basic research on hydrodynamics, or conceptual studies of advanced ship types are too long range and risky to attract much industry investment, but they are important if we are to maintain and expand our technological base.

Cost Effectiveness:

Can you demonstrate the cost effectiveness of your R&D activities?

We have conducted assessments that indicate that the overall returns from the R&D program have appreciably exceeded its cost. While determining the payback on R&D is a difficult process, we do know that many of our projects have had returns that are easy to see. For instance.

o In shipbuilding we started ten years ago with a project to computerize some of the design and construction tasks, and we are now working in every facet of the process and seeing substantial improvements in productivity. As a result of our program, the industry is overhauling their operations, creating new concensus standards, and establishing performance measurement to streamline their workflow. In addition, over 150 technical projects have been conducted with 50% implemented within two years of completion; an automated pipe ship is now coming on line which will reduce pipe fabrication manhours by 40% -- pipe for one ship now consumes 200,000 manhours; and, an industrial engineering project, now less than a year old, has already saved $1,000,000 -- twice the cost of the project.

o In energy conservation we have worked successfully in a number of areas to cut fuel consumption. A series of improvements have been developed that can be retrofitted to existing boilers and turbines to save upwards of 10%; coatings have been developed to reduce drag and thereby fuel consumption; propellers and ship forms have been designed which will make distinct improvements to the movement of ships through the water; and, work has been undertaken to adapt fuel efficient diesels to the U.S. fleet. Our present thrust is to revive the use of coal on modern ships so that we can be assured a source of energy for ships when oil is no longer readily available.

o In Communications we conducted experiments in cooperation with NASA that led to a commercial maritime satellite system. We also developed modern communications systems that are now in use on the Great Lakes, and will soon be in use on the Inland Waterways.

o In Ship Operations we have introduced advanced computer/communications systems that have improved cargo documentation, equipment control, and financial management. Recently a captain reported that by using one of our terminals to determine a draft change, he cleared a restricted channel and saved 12 hours of ship time, thereby paying off the cost of the terminal on its first day aboard.

o In defense related studies we have designed a series of mobilization ships which can be profitable in commercial service yet immediately usable for defense purposes and we are now working with the Navy to test a MarAd developed cargo module which would readily convert our fleet of containerships into military auxiliaries.

An indirect measure of the program's benefits can be gauged from the industry's interest in it. About half of our projects are cost-shared with most of the major shipyards and operators contributing both time and money to it. And, perhaps more importantly, they implement its results.

Fuel Costs: Conversion from Oil to Diesel Engines:

One of the biggest problems currently faced by U.S.-flag operators is the high cost of operating their steam turbine engines. Why are we only now beginning to build merchant ships in the United States with the more fuel efficient diesel engine when foreign vessels have had diesels for years? You might expect that since you have been receiving between $15-$20 million a year for Research and Development that you would have promoted fuel efficient engines much earlier.

The Maritime Administration has been studying ways to increase fuel efficiency — including ways to adapt foreign diesel designs — for some years.

A decade ago the maritime industry was more concerned with manning costs than fuel consumption, and energy costs were just one component of ship expenses rather than the dominant factor that it is now. Immediately after the 1974 oil embargo we reoriented our program to place even more emphasis on fuel efficiency, and, because most of the fleet was equipped with steam turbines and their replacement was impractical, we concentrated on techniques to upgrade boilers and turbines. Some of these techniques have been quite successful and are now in service. In addition, we have devoted a significant part of our budget to other ways of saving fuel such as producing better propellers, designing more effective hulls, and improving auxiliary machinery.

We also turned our attention to diesels and looked for ways to adapt them to U.S. flag ships. (For a variety of reasons European ships had been using diesels for decades.) We have been trying to develop a U.S. manufacturing capability to conform to the Buy-American provisions of the law, and we have been setting up training programs for American operating personnel.

We believe that it is now important to look beyond diesels. In the coming years fuel oil will become more expensive and harder to get, even for fuel efficient diesels. Coal will return to marine service and we are devoting much of our machinery research to making coal-burning a viable alternative for ship operators.

Ports and Intermodal Systems

$848 thousand is requested for Port and Intermodal Systems (page MA-61). Research and Development projects undertaken in support of this program are concerned with regional port planning, port fire protection, and the enhancement of port productivity through the use of improved equipment, facilities, and services. Are there any services that you provide under this activity that ports could not contract for on their own with private consultants? Is there any reason for you to continue this activity other than the mandate in section eight of the Merchant Marine Act of 1920?

The 1982 budget for Port and Intermodal Systems consists of two items; first, $848,000 for salaries and related expenses associated with our Washington, D.C. headquarters and regional port personnel, and second, $600,000 for port related research and development work. Headquarters and regional staff personnel are active in serving the nation's ports in peacetime through local and regional port planning projects, and in preparing our ports for Federal Port Management in periods of national emergency.

The peacetime port activities of the Maritime Administration are largely concerned with cooperative, cost-shared port planning studies that forecast regional commodity movements, examine future ship types and sizes, and then identify future port requirements. Such studies have been completed for nearly every U.S. seacoast state, including Washington State, Northern California, the Great Lakes, and the mid-American states on the Mississippi River system. A study is underway for the Delaware River Ports Authority, and one is planned with the Port Authority of New York and New Jersey. Each of these studies brings together otherwise competing ports located in a single geographic region. These studies assure on the one hand that neighboring ports do not unknowingly duplicate costly new equipment, and assure on the other hand that a region does not ignore a vital new market. The Maritime Administration's assistance in each of these regional studies has been invited by the participating ports, and its service as a catalyst in bringing together otherwise competing ports has been highly valued.

Other peacetime port activities of MarAd are concerned with marine fire protection (MarAd has sponsored fire protection seminars and port fire safety assessments), the development of port equipment and facilities to improve the intermodal transfer of ocean freight, and representing the United States at various international port conferences. Because of the regional and national scope of these activities, and the need for multi-state/multi-port coordination, a Federal role is required to assure that port development takes place in the best interests of the Nation.

In time of national emergency, MarAd exercises control of the nation's ports under the National Shipping Authority. In exercising this control, MarAd must provide assurances that

specific commercial terminals required for the shipping needs of the Defense Department and other Federal agencies are available. As part of its emergency port planning function, MarAd maintains a computerized Emergency Berth Utilization Reporting System (EBURS), and a computerized port facilities inventory. MarAd's emergency port role cannot be turned over to private consultants.

In addition to the legislative mandate in Section 8 of the 1920 Merchant Marine Act, Parts 1901 and 1903 of the National Defense Appendix 32A CFR establish MarAd's wartime port role, and PL 96-371 requires the Secretary of Commerce to report annually to the Congress on the conditions of the nation's public ports.

Coal Export Harbors:

A major problem prominent in the news is the need for dredging and coal export facilities at a number of U.S. ports involved in the coal export trade.

How has MarAd addressed this problem?

MarAd has played an important technical role by preparation of a national capability assessment of the throughput handling capacities of existing and planned U.S. coal port facilities for coal export and connecting inland transportation systems. This national coal port analysis identifies and describes coal harbors, channels, berths, and landside transfer and storage facilities. Central to the analysis is a comparison of the coal-handling capacity of the existing system with the projected flow of coal in the 1980-2000 time frame. From this, a capacity requirements schedule has been established which identifies time-phased shortfalls in coal terminal capacity.

In addition to the demand-capacity analysis of coal ports, alternatives have been developed both for the short-term and long-term for improving coal throughput and removal of current bottlenecks. These alternatives include both existing and new technologies, and address the environmental, legal, and institutional aspects of coal port expansion and/or modification to meet projected coal exports and domestic movements.

Among some of the other actions MarAd has taken to address this problem are: participating as one of the key agencies in the work of the Presidential Interagency Coal Export Task Force; developing design criteria for coal terminal shiploading facilities for accommodating large shallow draft and wide beam ships; providing marketing, planning, and cost information relative to U.S. export coal shipping requirements and opportunities to the year 2000; on-site inspections of principal coal port terminal operations including a look at the vessel queuing problem which resulted in a MarAd recommendation for an improved scheduling and reservation system for coordinating ship arrivals and coal car spotting; determining the competitive position of the Great Lakes coal loading ports in relation to other U.S. coastal regions; and an examination of the dredging and port permitting problem.

Market Development

$1.24 million is requested for the market development activity. In reading the description of this activity one gets the impression that this is an activity that any well run U.S.-flag carrier should be doing internally as part of its own marketing activity.

Why is it necessary for you to provide this service?

Section 212 of the Merchant Marine Act authorizes and directs Maritime Administration cooperation with vessel owners in devising means by which the importers and exporters of the United States can be induced to give preference to vessels under United States registry and liaison with representative trade organizations directly or indirectly concerned with our water-borne foreign commerce for the purpose of securing preference to vessels of United States registry. The primary responsibilities in carrying out this mandate are much broader than the simple marketing and sales implied by the question.

The programs devised to meet these responsibilities are not directed at providing services which the carriers can and should provide to meet their individual specific marketing requirements. MarAd programs are aimed at providing market assistance to the U.S.-flag carriers as a group on a broad basis. This involves analyses of market opportunities resulting from changing world economics, changing product movements, or disruptions to trade caused by changing world politics and international agreements. Many of these analyses are based on restricted data not available to the individual carriers. These analyses also assist the agency in monitoring trends, evaluating rapidly developing market issues, and making legislative recommendations.

Further, in order to assure that equitable U.S.-flag cargo shares are maintained, this line item provides for monitoring the sharing of cargo under bilateral type maritime agreements entered into by the United States, and the compilation and evaluation of data for monitoring those trades where unilateral actions by foreign governments interfere with free access to cargo.

Aren't the U.S.-flag carriers capable of doing their own marketing?

U.S.-flag carriers are capable of and are doing their own marketing. MarAd's market development program is not directed at replacing carrier marketing or providing services the carriers can or should perform but rather at supplementing their marketing programs with activity in marketing in areas where government has a capability or resource not available to the individual carrier or in areas where there are economies of scale from centralized efforts. Foreign carriers achieve these economies of scale through governmental mechanisms, such as the EEC and the formation of international commercial consortia that freely share market information. U.S.-flag carriers cannot freely share market information and, therefore, must rely on MarAd developed information.

The carriers by necessity market their own services for profit motives. MarAd markets the U.S.-flag merchant marine as a national asset.

Have you ever evaluated the effectiveness of this activity?

Voluntary information from shippers and carriers indicates that for the period 1974-1980 approximately $163.7 million in additional reveune has been paid to U.S.-flag carriers as a result of shipper response to the MarAd program. In FY 1980 MarAd was informed of the payment of $37.2 million in additional revenue to U.S.-flag ships due to shipper response to the OMD program.

A formal evaluation of the Market Development Program was made by an independent contractor in 1975 who concluded that one shipper out of every 10 exposed to OMD contact or activity responded positively with increased cargo being directed to U.S.-flag vessels. An extrapolation of this study by MarAd's own program evaluation group indicated for the year 1976, $45,150,000 in U.S.-flag freight revenue relatable to MarAd's market development activity.

Federal Ship Financing Fund

Effect of Seatrain's Bankruptcy on the Revolving Fund:

Recent newspaper and magazine articles indicate that the bankruptcy of Seatrain may cost the Title XI Revolving Fund millions of dollars. Currently, how large is the Revolving Fund? What effect will the Seatrain bankruptcy have on the Fund?

The current (February 28, 1981) liquid balance (cash and marketable securities) in the Title XI Revolving Fund amounts to $153,000,000. It is not expected that the Seatrain bankruptcy will have any significant impact on the Revolving Fund. Two of the tankers (BROOKLYN and WILLIAMSBURGH) built at Seatrain's shipyard are long-term time chartered to American Petrofina. The other two tankers (STUYVESANT and BAY RIDGE) are currently operating under charter in the Alaskan oil trade and are expected to continue to do so. The three Boston VLCC tankers (MASSACHUSETTS, NEW YORK and MARYLAND) are time chartered by Seatrain subsidiaries. These vessels have been able to gain entry into the domestic trade every six months. It is expected that the earnings generated by the group of tankers controlled by Seatrain will be sufficient to service the Title XI obligations on these tankers.

MarAd and Seatrain are actively exploring the possibility of sales of the tug and barges owned by Manhattan Barge, a Seatrain subsidiary. It is expected that this can be accomplished with no loss to the Revolving Fund.

Financing Off-Shore Oil Vessels:

How much of Title XI guarantee authority is committed to vessels participating in off-shore U.S. oil exploration and production? Would these vessels have been built in the United States without Title XI?

At the present time approximately $1.4 billion of Title XI guaranteed financing is outstanding or committed with respect to vessels engaged in oil exploration and production. Of this total, it is estimated that some $1.2 billion is now operating in and around U.S. waters. Because of the international nature of this business and the extreme mobility of the equipment, the quantity used in the U.S. changes regularly. This $1.4 billion of Title XI guarantees is comprised of 70 off-shore drilling rigs and approximately 200 supply and service vessels.

The Title XI program provides a significant financial benefit in the construction of this equipment for the typical owner. In general, both the duration of the loan as well as the interest rate is obtained under better terms using Title XI than would be available to the owner of this machinery without the program. These features tend to lower the price of the equipment in the market place thereby insuring that more of this equipment is built in U.S. yards than would otherwise be the case. Because of the nature of the industry and the mobility of the equipment, except for certain Jones Act trading restrictions that affect some of the supply and service vessels, foreign yards are a viable construction alternative. It is, therefore, believed that the Title XI program is a significant factor in assuring that much of the equipment is built in the United States and that without the program much of this machinery would be built in foreign yards.

Is MarAd's assistance in the financing of these types of vessels necessary to promote the U.S. maritime industry?

The financing available under the Title XI program offers many companies involved in the marine aspects of U.S. offshore oil exploration and production the most viable means of arranging for the construction and financing of merchant vessels. Although there are a number of companies in this trade which have not (as yet) utilized the Title XI program, many of the vessels engaged in this trade would not have been constructed without the use of Title XI financing. By taking advantage of the long-term and favorable interest rates available under the Title XI program, companies are able to lower their fixed expenses and thus improve a project's cash flow and its economic and financial viability. Without the ability to finance vessels on the terms offered by the Title XI program, the risk of project failure (expecially in the early years) could be at a level that may discourage the construction of such equipment. The benefits derived from the Title XI program are not only realized by the shipowners but aid all segments of the maritime industry, including shipbuilding, U.S. marine technology, employment of personnel and maintaining and enhancing marine operating ability. Additionally, the consumers who are the ultimate end users of the energy produced from projects involving these vessels, realize significant benefits from the Title XI program. That is, as the Title XI program can offer more favorable financing terms than conventional financing arrangements, the debt service and thus the overall operating expenses of the vessels are significantly reduced. As all expenses associated with the production of the final product

add to the total product cost, the reduction in vessel operating expenses effectively lowers the product cost. It would be anticipated that this cost savings will ultimately be passed on to the end users of the product.

Maritime Education and Training

What is the average salary offer for Kings Point graduates? What is the average salary offer for graduates from the State marine schools?

Kings Point and State marine school graduates generally receive the same employment and salary offers that other entry level merchant marine officers receive. Those graduates who obtain sailing berths during their first year usually have gross earnings from $25,000 to $35,000 per year depending on the amount of overtime worked.

Graduates who accept positions in maritime related areas ashore start at salaries ranging from $13,000 to $24,000 per year during their first year of employment

What was the source of new officers entering the U.S. merchant marine during the past five years? How many came from Kings Point, the state schools, the union schools and unlicensed seamen?

The following data reflect the source and number of new officers (unlimited licenses) that entered the U.S. merchant marine from 1976 to 1980.

Source	1976	1977	1978	1979	1980
U.S. Merchant Marine Academy	228	224	245	253	242
State Maritime Schools	443	429	604	584	705
Union Schools*	140	130	130	160	170
Unlicensed self-study and other sources*	260	280	310	320	340

*estimates

How much did it cost the Federal Government for each 1980 Kings Point graduate? Is it necessary to provide a completely free education to Kings Point midshipmen? What would be the effect of initiating a tuition charge at Kings Point? Doesn't experience at the State schools show that top caliber officers can be educated and licensed in the merchant marine with only limited financial assistance from the Federal Government?

We estimate that it cost the Federal Government about $47,700 exclusive of plant rehabilitation and construction program costs for each 1980 Kings Point graduate.

The logic that supports complete Federal funding of the Kings Point education is the same as for the other service academies, whose graduates also join officers from many other sources when they embark upon their careers. Federal funding of the national academies without tuition, assures that students will come from all parts of the country and from all of its economic sectors, on the basis of merit. With a tuition charge we believe the Academy would become local rather than national in character, with a concomitant reduction in the pool of qualified applicants. Further, a tuition charge would make it vastly more difficult to recruit from among the economically disadvantaged and, by the same token, would effectively discriminate in favor of those who could afford to pay. Over the long term we will need both the Federal and State academies as well as the industry schools to provide an adequate supply of merchant marine officers.

It should also be noted that a 1975 study by the Comptroller General of the United States of the financial operations of the five Federal academies shows that the Federal Academy operates at a significantly lower cost per graduate than any of the other Federal academies.

Apparently many State school cadets are motivated towards a merchant marine officer career without the incentive of a free education or a stipend. Is this a case for eliminating all State school cadet stipends?

Of the last graduating classes (1980) approximately 79 percent of the licensed graduates had been subsidized.

The student incentive payments have important linkages and should be continued. The Maritime Education and Training Act of 1980 (P.L. 96-453) links the student incentive payments to a three year service obligation to serve the foreign and domestic commerce and the national defense of the United States. Without the incentive payments, the cadets would not have an enforceable service obligation. Furthermore, the effectiveness of the Naval Science Departments at the five salt water academies is linked to the requirement that students receiving the stipends take Naval Science courses and apply for commissions in the Naval Reserve. The stipend thus assures that graduates will have received naval training consistent with the national security mission of the merchant marine.

Finally, the elimination of the stipends would discriminate against applicants from the lower economic level and would seriously hinder the minority recruiting systems at the academies.

Are there any cost elements in the requested funds for Kings Point or the State marine schools where cut backs can be made without affecting the quantity or quality of officers entering the merchant marine? What about travel expenses for entering and graduating classes at Kings Point? What about medical and dental expenses for midshipmen at Kings Point?

There are no cost elements in the requested funding for Kings Point and the State academies that could be cut back without adversely affecting the quantity or quality of future merchant marine officers. Cut backs on the statutory travel allowances would adversely affect the national character of the Academy. The Academy like the other Federal Academies draws its student body from all areas of the country. If the Academy could not provide travel expenses for entering and graduating classes this could create a discriminatory cost for candidates and midshipmen from the Western states. It would place the Academy at a disadvantage in the recruitment competition among the Federal Academies and would hinder minority recruitment.

The medical and dental benefits also support the national character of the Academy for the reasons already indicated. Further, the infirmary enables us to treat routine cases without the loss of student time, and the medical personnel provide counseling in various aspects of physical and mental hygiene.

Questions for the Record by Senator Hollings

Ship Construction

Since 1971, MarAd has financed the construction of 2 tankers exceeding 300,000 DWT. What is the present status of those 2 tankers?

The 390,000 deadweight ton U.S.T. ATLANTIC and U.S.T. PACIFIC were delivered in March 1979 and December 1979, respectively. Both vessels are operating under a 23 year demise charter to Grant Bassa Tankers which has, in turn, chartered them to Shell Oil.

The U.S.T. ATLANTIC is currently enroute from the Arabian Gulf to the U.S. Gulf carrying a cargo of crude oil. The U.S.T. PACIFIC is anchored off Fajairah in the Gulf of Oman awaiting a cargo expected to be available in April.

Operating-Differential Subsidy

Liquidating payments for Operating-differential Subsidies in 1982 are up 25% or $83,952,000 over the 1981 level of $333,196,000.

What accounts for this large increase?

Are similar increases expected in future years?

The greatest portion of the increase, $62,575,000, is due to the increased differential between foreign and domestic operating costs, primarily in wages. Both foreign and domestic wages have increased, the U.S. wages by 15 percent which will be modified for subsidy purposes by a Bureau of Labor Statistics index increase of eleven percent. The foreign net increase of 9.3 percent reflects to some extent the employment of progressively more very low cost oriental crews on competing vessels.

In addition, fleet changes in 1981 and 1982 will result in a net increase of $2,844,000, and payments for prior year operations will increase by an estimated $16,875,000. In addition, the effects of carryover from 1980 to 1981 result in a positive change of $1,658,000.

Future year increases in domestic costs are not precisely predictable. Both the cost-of-living increases included in the current contracts and the Bureau of Labor Statistics index show signs of decreasing. This would lead to lower increases in future years. The union contracts, however, are due to expire this June and future increases will depend partly on the results of the upcoming negotiations. Foreign cost increases are not now estimated to change radically in the near future, but the offsetting effect of the employment of more low-wage crews is expected to continue to magnify the wage differential.

Position Reduction

Do you have a summary of the activities where the 43 positions are being deducted from the base for Operations and Training?

The activities affected by the reductions are summarized in our response to the next question.

What is the impact on the various MarAd programs by these reductions?

Personnel resources for most agency programs will be reduced in FY 1982. However, operations in all programs will be continued. The expected impact by program is as follows:

Construction-Differential Subsidy - (-5)

Fewer resources will be available to evaluate, award, and administer contracts; this may cause minor delays in processing of applications.

Advanced Ship Development - (-2)

Position reductions will have a negligible impact since the program is scheduled for reduction in FY 1982.

Capital Construction Fund - (-2)

Reduced resources to evaluate requests will delay, to a small degree, the establishment of these funds.

Supplementary Training - (-2)

Shipboard firefighting instruction in the Western Region of MarAd will be contracted out instead of being performed in-house.

Emergency Plans/Operations - (-2)

Development and publication of specific procedures for implementing plans for emergency operations will take longer than originally projected.

U.S. Merchant Marine Academy - (-5)

Plant operations and the absorption of additional maintenance work by remaining staff may result in some delays in support services.

Operating-Differential Subsidy - (-4)

Reduced resources could cause some additional backlog in the processing of subsidy payments.

Market Development - (-4)

Contacts with American firms to encourage U.S.-flag ship use will be reduced. This may cause the loss of some opportunities for diverting additional cargoes from foreign to U.S.-flag ships.

National Cargo - (-2)

Reduced monitoring of the use of U.S.-flag ships for the transport of government cargoes may result in less compliance with the cargo preference statutes and some loss of revenue for U.S.-flag operators.

Advanced Ship Operations - (-2)

Position reduction will have a negligible impact since a reduced level of appropriations is planned for FY 1982.

Port and Intermodal Systems - (-2)

Some delays may occur in coordinating port development projects since the projected workload will have to be absorbed by the remaining staff.

Domestic Shipping - (-1)

Promotional activity will be reduced with minimal adverse consequence.

General Administration - (-10)

The timeliness of administrative support will be affected. Some backlogs in administrative processing are anticipated, and there will be some curtailment of services.

Can these reductions be attained through attrition?

We believe the FY 1982 reductions can be effected through attrition.

Questions Submitted by Senator Cochran

Coordination with Navy

What plans do you have, if any, to work with the Secretary of the Navy to devise and implement a program as mandated by Section 210 of the 1936 Merchant Marine Act to insure the creation and maintenance of an adequate and well-balanced fleet to maintain the essential foreign commerce of the United States? (see attached GAO report)

We have been working with the Navy on our periodic assessment of the adequacy and balance of the U.S. merchant fleet as mandated by Section 210 of the Merchant Marine Act, 1936. The latest version of this report is in draft form. The results of this assessment are similar to those of past years, that is, the U.S.-flag merchant fleet lacks sufficient ships to carry a substantial portion of U.S. waterborne foreign commerce; the fleet lacks sufficient liner-type vessels to deploy and support U.S. forces in a NATO war without assistance from our NATO allies; and, because the U.S.-flag fleet lacks sufficient large crude oil tankers and dry bulk vessels, we must count on U.S.-owned foreign-flag shipping for carriage of critical imports in time of emergency.

In the past, the government has worked within the structure of the promotional programs specified in the 1936 Act to achieve an adequate and well-balanced merchant fleet. The Administration has initiated a comprehensive review of maritime policy alternatives. When that review is complete, specific proposals can be made to improve the situation.

Do you have any plans to review and comment on plans by the Department of Defense to purchase foreign-built ships for Navy use? Do you think that the Navy should, to the maximum possible degree, purchase and use only American-built ships? Shouldn't we give our shipyards all of our business?

We have been working with the Navy to measure the requirement for military support shipping and to find ways to help the Navy satisfy those requirements.

In the case of the British-built combat stores ships LYNESS and TARBATNESS, a unique time-critical requirement exists for combat stores ships. This requirement cannot be met by any vessel in the U.S. Merchant Marine. The same time-critical requirement exists for ro/ro vessels. There has been a limited market for ro/ro's, therefore, few exist in the U.S.-flag fleet. This requirement is being satisfied by two German-built vessels acquired by a U.S. company and chartered to the Military Sealift Command. Both the requirement for combat stores ships and the requirement for ro/ro vessels were generated by the crisis in the Persian Gulf. The immediate nature of the crisis left no time for construction of vessels in U.S. yards.

We believe that the Navy should, whenever possible, purchase and use only American-built ships. Occasionally, military requirements dictate otherwise. However, the need for a

shipyard industrial base that can respond to national defense requirements demands that our shipbuilding industry be maintained. Contracts for construction of Navy vessels are essential for that purpose.

Reductions in Ship Construction Assistance

The Administration has proposed deep cuts in the Title XI loan guarantee program and in the Title V construction-differential subsidy program. These programs exist in response to heavy subsidies granted by foreign competitors, and I am concerned that we may do irreparable harm to our domestic industry if we follow through with these reductions. Would you please respond to these concerns?

The Title XI loan guarantee program presently has a backlog of applications for loan guarantees in excess of $3 billion. The limitation of Title XI loan guarantees to levels of $900 million in fiscal year 1981 and $1,050 million in 1982 may result in a reduction of certain new shipbuilding orders.

With respect to construction-differential subsidies (CDS) under Title V, no new funds are requested for ship construction in 1982. However, the President's budget provides for the deferral into 1982 of $92 million from 1981, which will provide sufficient funds to subsidize the construction of two additional ships in 1982. Funds not required for new construction contracts should be sufficient to cover 1982 change orders under existing contracts. The Administration anticipates that the expanded Navy construction program will significantly improve shipyard activity. The Administration plans to conduct a full review of maritime policies which will take into account the shipbuilding capacity worldwide, the numbers of U.S.-flag and foreign-flag vessels participating in world trade, and the impact that construction subsidies have on maintaining a shipbuilding mobilization base. Consistent with Administration commitments, the maritime policy developed will recognize fully the impact of planned increases in naval shipbuilding, ways to increase commercial participation in military support functions, and the effect that new tax policies will have on improving the competitiveness of the U.S. merchant marine. Pending the outcome of that review, CDS funding at the $100 million a year level is projected for the years 1983 to 1986.

Significant energy and national defense potential exists in a program to capture natural gas which is being flared at off-shore oil wells. This gas could eventually displace up to 15.7 percent of our oil imports. Refining and shipping capacity depend on development of methanol-producing barges, which are currently being considered by numerous shipbuilders, including some in the U.S. If we are to maintain our lead in this program, it is essential that these barges qualify for assistance under Title XI and Title V of the Merchant Marine Act. I hope that the Maritime Administration will carefully consider this important question.

Methanol-producing barges may be eligible for financing guarantees under Title XI of the 1936 Merchant Marine Act depending upon their design and eligibility for documentation under the Ship Mortgage Act. Methanol-producing barges, however, are not eligible for construction-differential subsidy (CDS) under Title V, which limits CDS to vessels engaged in cargo carriage in the U.S. foreign commerce. Legislative action to amend the existing statute, therefore, would be required to qualify such barges for assistance under Title V. The expansion of the eligiblity requirements for CDS to include methanol-producing barges could have a significant budgetary impact, if CDS funding were provided.

SUBCOMMITTEE RECESS

Senator WEICKER. The subcommittee will recess until next Tuesday, when we will hear from the International Trade Administration, Patent Office, U.S. Travel Service, and other elements of the Department of Commerce.

[Whereupon, at 11 a.m., Thursday, March 26, the subcommittee was recessed, to reconvene on Tuesday, March 31.]

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1982

TUESDAY, MARCH 31, 1981

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:43 a.m., in room S-126, the Capitol, Hon. Lowell P. Weicker, Jr., (chairman) presiding.

Present: Senators Weicker and Rudman

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

STATEMENT OF PAUL T. O'DAY, ACTING UNDER SECRETARY FOR INTERNATIONAL TRADE

ACCOMPANIED BY:

HAROLD WILLIAMS, ACTING ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT
LEE WELLS, ACTING ASSISTANT SECRETARY FOR TOURISM
JOHN GREENWALD, ACTING ASSISTANT SECRETARY FOR TRADE ADMINISTRATION
FRANKLIN J. VARGO, ACTING ASSISTANT SECRETARY FOR INTERNATIONAL ECONOMIC POLICY
ERIC L. HIRSCHHORN, DEPUTY ASSISTANT SECRETARY FOR EXPORT ADMINISTRATION
JAMES A. MOORHOUSE, ACTING DEPUTY DIRECTOR FOR FOREIGN COMMERCIAL SERVICE
RONALD L. WILSON, BUDGET OFFICER
NANCY A. RICHARDS, DIRECTOR, OFFICE OF BUDGET

PREPARED STATEMENT

Senator WEICKER. Our next request is for the International Trade Administration. Appearing on behalf of the ITA is Mr. Paul O'Day, Acting Under Secretary for International Trade who is accompanied by various members of his staff who I will allow him to introduce at this time.

Mr. O'DAY. Thank you, Mr. Chairman.

Senator WEICKER. Please proceed.

Mr. O'DAY. To my right is Mr. Williams, the Acting Assistant Secretary for Economic Development. To his right is Mr. Wells, the Acting Assistant Secretary for Tourism. To my left is Ronald Wilson, who is

the Budget Officer for ITA. To his left is John Greenwald, the Acting Assistant Secretary for Trade Administration. We have a few other officials in the room who can answer details on other programs. We have submitted a statement to the committee.

Depending on your preference, sir, we can read it or just quickly summarize it.

Senator WEICKER. Why don't you summarize it, and then we can move right away to the questions. Your statement in its entirety will be included in the record at this point.

[The statement follows:]

STATEMENT OF PAUL T. O'DAY

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM PLEASED TO APPEAR BEFORE YOU IN SUPPORT OF THE INTERNATIONAL TRADE ADMINISTRATION'S AMENDED 1982 "OPERATIONS AND ADMINISTRATION" APPROPRIATIONS REQUEST OF $182,636,000 AND 2,395 POSITIONS. THE AMOUNT REQUESTED FOR 1982 REFLECTS A NET INCREASE OF $62,235,000 AND 125 POSITIONS FROM THE 1982 BASE, AND A NET INCREASE OF $75,135,000 AND 66 POSITIONS FROM THE AMOUNT CURRENTLY AVAILABLE IN THE 1981 APPROPRIATION. THE NET INCREASE FROM THE 1982 BASE INCLUDES $53,430,000 AND 40 POSITIONS FOR TRADE ADJUSTMENT ASSISTANCE AND $7,500,000 AND 85 POSITIONS FOR TOURISM ACTIVITIES IN ADDITION TO $1,205,000 FOR EXPORT ADMINISTRATION PROGRAMS.

THE PROGRAMS OPERATED BY THE INTERNATIONAL TRADE ADMINISTRATION CAN BE GROUPED INTO THREE FUNCTIONAL AREAS: TRADE DEVELOPMENT; INTERNATIONAL ECONOMIC POLICY; AND TRADE ADMINISTRATION.

TRADE DEVELOPMENT

FOR OUR TRADE DEVELOPMENT ACTIVITY, WE ARE REQUESTING $83,827,000 AND 1,575 POSITIONS, A NET INCREASE OF $7,500,000 AND 85 POSITIONS OVER THE 1982 BASE. THESE PROGRAMS ARE DESIGNED TO STRENGTHEN THE INTERNATIONAL TRADE AND PAYMENTS POSITION OF THE UNITED STATES. THEY INCLUDE EXPORT DEVELOPMENT, THE U.S. AND FOREIGN COMMERCIAL SERVICES, AND TOURISM.

FOR THE EXPORT DEVELOPMENT SUBACTIVITY, WE ARE REQUESTING $28,883,000 AND 485 POSITIONS. THE PROGRAMS IN THIS AREA ENCOURAGE AMERICAN FIRMS WITH UNTAPPED EXPORT POTENTIAL TO ENTER FOREIGN MARKETS, IN BOTH FREE AND CENTRALLY-PLANNED ECONOMIC MARKETS, THROUGH A WIDE VARIETY OF TRADE PROMOTION AND EXPORT INFORMATION SERVICES.

THE REQUEST FOR THE U.S. AND FOREIGN COMMERCIAL SERVICE TOTALS $48,444,000 AND 1,035 POSITIONS, A NET INCREASE OF $1,100,000 AND

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30 POSITIONS OVER THE 1982 BASE. THE INCREASE REQUESTED IS FOR ADDITIONAL FOREIGN COMMERCIAL SERVICE (FCS) STAFFING TO SUPPLEMENT INTERNATIONAL TOURISM MARKETING EFFORTS ABROAD WHILE RESPONDING TO OTHER COMMERCIAL DEMANDS. THE U.S. AND FOREIGN COMMERCIAL SERVICE PROVIDES ASSISTANCE AT SITES CONVENIENT TO THE BUSINESS COMMUNITY BOTH IN THE UNITED STATES AND OVERSEAS THEY INCLUDE 47 DISTRICT OFFICES IN THE UNITED STATES AND POSTS IN 65 KEY EXPORT MARKETS THROUGHOUT THE WORLD.

FOR TOURISM, WE ARE REQUESTING $5,500,000 AND 55 POSITIONS, IN ADDITION TO THE $1,100,000 AND 30 POSITION INCREASE REQUEST FOR THE U.S. AND FOREIGN COMMERCIAL SERVICE FOR TOURISM-RELATED WORK. THE TOURISM PROGRAM WILL PROVIDE POLICY RECOMMENDATIONS, MARKETING ASSISTANCE AND COORDINATION TO ORGANIZATIONS INVOLVED IN TOURISM; AN ANALYTICAL BASE FOR ASSESSING DEVELOPMENTS IN THE TOURISM INDUSTRY; AND MARKETING PROGRAMS PROMOTING TOURISM TO THE UNITED STATES THROUGH OFFICES IN KEY MARKETS ABROAD.

INTERNATIONAL ECONOMIC POLICY

THE BUDGET REQUEST FOR THE INTERNATIONAL ECONOMIC POLICY ACTIVITY IS $64,442,000 AND 275 POSITIONS, REFLECTING A NET INCREASE OF $53,430,000 AND 40 POSITIONS OVER THE 1982 BASE DUE TO THE TRANSFER OF TRADE ADJUSTMENT ASSISTANCE PROGRAMS FROM THE ECONOMIC DEVELOPMENT ADMINISTRATION.

THIS ACTIVITY IS RESPONSIBLE FOR OVERALL DIRECTION AND COORDINATION OF INTERNATIONAL ECONOMIC POLICY FORMULATION, RESEARCH, AND ANALYSIS WITHIN THE DEPARTMENT OF COMMERCE; IMPLEMENTATION OF THE RESULTS OF THE MULTILATERAL TRADE NEGOTIATIONS (MTN); AND PARTICIPATION IN THE NEGOTIATION AND IMPLEMENTATION OF TRADE AGREEMENTS.

FOR THE TRADE AGREEMENTS AND POLICY PLANNING SUBACTIVITY, WE ARE REQUESTING $8,295,000 AND 181 POSITIONS. THESE PROGRAMS DEVELOP

AND IMPLEMENT TRADE POLICIES AND AGREEMENTS; CONDUCT ECONOMIC RESEARCH AND ANALYSIS IN SUPPORT OF POLICY FORMULATION; AND ADMINISTER THE TEXTILES AND APPAREL IMPORT AND EXPORT PROGRAMS.

WE ARE REQUESTING $2,717,000 AND 54 POSITIONS FOR PROGRAMS IN FINANCE, INVESTMENT AND SERVICES. THESE PROGRAMS DEVELOP THE DEPARTMENT'S POSITIONS ON INTERNATIONAL FINANCE, INVESTMENT, AND SERVICE INDUSTRY ISSUES, AND THEY CARRY OUT CONTINUOUS MONITORING AND EVALUATION OF FOREIGN INVESTMENT IN THE UNITED STATES.

IN TRADE ADJUSTMENT ASSISTANCE, WE ARE REQUESTING $53,430,000 AND 40 POSITIONS. THIS PROGRAM WILL ASSIST FIRMS CERTIFIED AS ADVERSELY AFFECTED BY FOREIGN IMPORTS TO BECOME COMPETITIVE BY HELPING TO FINANCE THE IMPLEMENTATION OF VIABLE RECOVERY PLANS IN CASES WHERE PRIVATE CREDIT IS OTHERWISE UNAVAILABLE ON REASONABLE TERMS OR WITHOUT GUARANTEE. IN ADDITION, PLANNING GRANTS AND OTHER FORMS OF TECHNICAL ASSISTANCE WILL BE MADE AVAILABLE TO TRADE-IMPACTED COMMUNITIES. LOAN GUARANTEE AUTHORITY OF $42,500,000 IS ALSO REQUESTED.

TRADE ADMINISTRATION

FOR OUR TRADE ADMINISTRATION ACTIVITY, WE ARE REQUESTING $18,591,000 AND 428 POSITIONS, A NET INCREASE OF $1,205,000 OVER THE 1982 BASE. THIS ACTIVITY IS RESPONSIBLE FOR IMPLEMENTING A NUMBER OF PROGRAMS WHICH REGULATE THE FLOW OF TRADE BOTH INTO AND OUT OF THE UNITED STATES.

FOR THE EXPORT ADMINISTRATION SUBACTIVITY, WE ARE REQUESTING $10,723,000 AND 255 POSITIONS, AN INCREASE OF $1,205,000 OVER THE 1982 BASE. THIS INCREASE WILL BE USED TO ESTABLISH AND MAINTAIN AN EXPORT ADMINISTRATION PROGRAM WHICH IS RESPONSIVE TO THE EXPANDED REQUIREMENTS OF THE EXPORT ADMINISTRATION ACT OF 1979. THIS PROGRAM IMPLEMENTS EXPORT CONTROLS FOR REASONS OF NATIONAL SECURITY, FOREIGN POLICY, AND SHORT SUPPLY; CONDUCTS PROGRAMS TO

OPPOSE RESTRICTIVE TRADE PRACTICES OR BOYCOTTS; AND CONDUCTS PROGRAMS TO ASSURE THE AVAILABILITY OF INDUSTRIAL RESOURCES FOR NATIONAL EMERGENCIES AND FOR NATIONAL DEFENSE, ENERGY, AND OTHER PRIORITY SECTORS.

FOR THE IMPORT ADMINISTRATION SUBACTIVITY, WE ARE REQUESTING $7,858,000 AND 173 POSITIONS FOR THE DEPARTMENT'S ANTIDUMPING AND COUNTERVAILING DUTY PROGRAMS TO PROTECT U.S. INDUSTRY FROM INJURY DUE TO SALES OF FOREIGN GOODS AT PRICES BELOW FAIR VALUE, AND FOREIGN GOVERNMENT SUBSIDIZATION OF IMPORTS INTO THE UNITED STATES. IMPORT ADMINISTRATION IS ALSO RESPONSIBLE FOR THE FOREIGN TRADE ZONES, WATCH QUOTA, FLORENCE AGREEMENT, AND FOREIGN EXCESS PROPERTY PROGRAMS.

FINALLY, WE ARE REQUESTING $15,775,000 AND 118 POSITIONS FOR ADMINISTRATIVE SERVICES TO SUPPORT ITA'S PROGRAMS, INCLUDING FUNDS FOR CENTRALLY BUDGETED ITEMS SUCH AS SPACE RENTAL PAYMENTS TO GSA, TELEPHONE PAYMENTS, AND WORKING CAPITAL FUND PAYMENTS TO THE DEPARTMENT.

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATEMENT. I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU OR THE COMMITTEE MAY HAVE.

BUDGET REQUEST

Mr. O'DAY. The amended 1982 operations and administration request for ITA is $182,636,000 and a total of 2,396 positions. This represents a net increase of $62,235,000 and 125 positions from the 1982 base. The basic parts of the increase include $53,430,000 and 40 positions for trade adjustment assistance; and $7,600,000 and 85 positions for tourism activities; and $1,205,000 for export administration programs.

Basically, this request falls into three functional areas: The first is trade development. We are requesting $83,827,000 and 1,575 positions, which is a net increase of $7.6 million and 85 positions over the 1982 base. This includes tourism activities.

The second area is international economic policy and our request there is for $64,442,000 and 275 positions. The trade adjustment assistance programs, as I mentioned, falls into this area.

Finally, Mr. Chairman, in the trade administration area, we are requesting $18,591,000 and 428 positions. This is the same level of personnel with a net increase of $1,205,000 over the 1982 base for export administration functions, a one-time request in the budget.

That completes my summary, sir. We would be pleased to answer your questions.

Senator WEICKER. Thank you very much, Mr. O'Day. Because Senator Rudman has to preside over the Senate at 10 o'clock, I will now go ahead and defer to him for whatever questions he may ask.

SMALL BUSINESS ASSISTANCE

Senator RUDMAN. I only have one question this morning, because I am not that familiar with your operation.

In particular, I know from my own State that the Federal Government, both your agency and the Commerce Department, do a great deal to help some of the larger minority companies in terms of their exports. What programs do you have directed toward some of the small high technology companies that have a great deal to export but, quite often, lack the expertise to do it?

Mr. O'DAY. We give priority, Senator, to any firms that need help. For smaller- and middle-sized firms, we will do whatever is necessary to lend a hand.

Often, that means more detailed assistance for these companies, because they don't have permanent staffs that concentrate on export sales. In particular, our WITs program, the worldwide information and trade system, which has been under development now for about 2 years, would be of specific help to these companies as we get to its full operational phase in 1982.

Senator RUDMAN. How do these companies become aware of the services that you have to offer?

Mr. O'DAY. We use primarily our 47 district offices around the country to distribute information, to make visits to firms that are not in exporting, and also to firms that are actually exporting. We have a caseload for all of our people in the field to be sure that any potential exporters are identified to make our services known. In addition, we hold a number of seminars over the course of any given year to attract individuals who aren't aware of our services. The small- and middle-sized businesses have been and will continue to be a priority in this area.

Senator RUDMAN. I am sure the chairman shares my concerns, because he chairs the Select Committee on Small Business. I am concerned about that because we have a number of high technology companies in New England who have expressed to me a great difficulty in how to tap the export market. I just hope you will continue the emphasis in that area.

It seems to me, in a cumulative way, that these small companies would be substantial in helping the balance of payments. Thank you.

Thank you, Mr. Chairman.

Senator WEICKER. I am going to continue on Senator Rudman's question. I think it is a good question. How does somebody in small business and why should they know that you stand to offer them any particular services? I will be honest with you. I know very little about the International Trade Administration myself, and I have sat on this committee for quite a few years.

Somebody obviously knows what you do and obviously takes advantage of it. You have a fairly substantial organization. If I am a little short on this kind of knowledge, I imagine that is also the case among the small business communities.

What do you do in terms of active outreach to these communities?

Mr. O'DAY. Our field offices, Mr. Chairman, are very active in the community. Local organizations that would have, as members, the principals in the firms in that area, chambers of commerce, any local business or industry association, are certain to see our field people on a regular basis, so they take every opportunity to get the message out as to the services we have.

Senator WEICKER. How are we going to monitor that? For example, you say you have 47 offices around the country?

Mr. O'DAY. Yes, sir.

Senator WEICKER. Do you have an office in New Hampshire?

Mr. O'DAY. Do we have one? I am not sure.

Mr. VARGO. No; that is covered by Boston.

Senator WEICKER. Is there one in Hartford?

Mr. VARGO. Yes, there is; one in Hartford and one in Boston.

Senator WEICKER. How many people are in the office in Hartford?

Mr. O'DAY. I don't have that total, sir, but the professionals in those offices have geographical regions assigned to them. They travel into those regions on a regular basis and make——

BOSTON AND HARTFORD FIELD ACTIVITY

Senator WEICKER. I would like to have a list. I would like to have a list from the Boston office and from the Hartford office for the calendar year 1980, as to the organizations that visits were made to, and also those, the specific companies that visits were made to during the course of 1980.

[CLERK'S NOTE.—The information was submitted and is being retained in the subcommittee files.]

NEW HAMPSHIRE COMPANIES CONTACTED BY ITA

Senator RUDMAN. Mr. Chairman, since you are going to make a request, I would like to see a list of the companies in the State of New Hampshire that were in any way contacted and aided, whether successful or not.

Mr. O'DAY. We will submit one.

[CLERK'S NOTE.—The information was submitted and is being retained in the subcommittee files.]

PRODUCTS IN THE HANDS OF LARGE AND SMALL BUSINESSES

Senator WEICKER. My own feeling is this: That just from an export point of view the great genius of this country in terms of product development and the types of products which the world is looking for, is as much in the hands of small businesses as much as large businesses. I am not sure at all that they know this is available to them, this type of expertise. We will just have to see what the situation is there.

Mr. Rudman, any further questions?

Senator RUDMAN. No, Mr. Chairman. I will have to leave in a couple of minutes to go up to the floor.

SMALL BUSINESS EXPORT EXPANSION ACT

Senator WEICKER. Last year, the Congress passed and the President signed Public Law 96–481, which included the Small Business Export Expansion Act.

Under 96–481, the International Trade Administration is to fund 50 percent of the cost of the small business export centers around the country. One million dollars was provided for this program in the continuing resolution for 1981. It is my understanding that this administration proposes to eliminate this program and use the $1 million appropriated for it to offset the 1981 pay supplemental.

This action raises several concerns.

First of all, this committee has never received a reprograming request or a rescission to eliminate the program. How do you account for this?

Mr. O'DAY. That is included, sir, in the current budget that is now before the committee. Your summary is correct. This is part of the decision that was made. It is part of the overall review of the categorical grant programs. We feel that the small business portion of our export development program, overall, will fill the needs that are there.

Senator WEICKER. I am sorry. Could you repeat that?

Mr. O'DAY. The small business aspect of the current range of programs that we have in export promotion will respond to the needs that were identified in the legislation, including everything from trade shows, trade missions, the identification and encouragement of foreign buyers to come to this country to visit our trade shows, to the range of services that we mentioned through our field offices in the earlier colloquy.

Senator WEICKER. That certainly isn't—I am telling you that that certainly wasn't the situation which precipitated the legislation which we passed last year. The counsel indicates again that the $1 million is earmarked because it was felt that not enough attention was being paid to this area.

Mr. O'DAY. I can only emphasize, sir, that smaller- and middle-sized businesses really are the core of our export promotion program.

We tend to spend more time with these firms because they need the kind of help that we provide. It is the emphasis of our entire field structure to identify potential new markets for firms that need our assistance in exporting.

SOVIET UNION TRADE RESTRICTIONS

Senator WEICKER. What has been the role of the ITA in monitoring the U.S. trade embargo against the Soviet Union?

Mr. O'DAY. I would like to call on Deputy Assistant Secretary Hirschhorn to comment on that.

Mr. HIRSCHHORN. Our compliance efforts have involved both the intelligence community and the Department of Agriculture in reviewing and investigating each and every allegation that comes to our attention of a possible violation of the embargo, whether by direct shipment or illegal reexports.

Senator WEICKER. How many such incidents have been reported? How many have actually been documented as being true?

Mr. HIRSCHHORN. I would have to furnish that for you, if I may, sir.

[The information follows:]

Fifteen allegations have been received concerning possible violations of the Soviet grain embargo. Twelve cases were closed with no violation being established. The remaining three are currently under investigation.

JAPANESE AUTOMOBILE IMPORTS

Senator WEICKER. What has been the role of the ITA with respect to the deliberations within the administration in relation to the reduction of automobile imports from Japan?

Mr. O'DAY. We have carried out, Mr. Chairman, a number of basic analyses for the Secretary. We are working on that issue. We have a small staff of people who are charged with the responsibility of doing analyses in this area. Our expertise in Commerce is spread over a number of areas. We tend to, rather than duplicate it, draw on it from the various departments to get to the basic point.

FOREIGN COMMERCIAL SERVICE

Senator WEICKER. In April 1980, pursuant to Reorganization Plan No. 3, the Foreign Commercial Service was transferred from the Department of State to Commerce. In part, this agreement calls for a 5-year phased transfer of 162 commercial officer positions.

How many of the Foreign Commercial Service positions were filled by former Foreign Service officers who transferred to Commerce?

Mr. O'DAY. That process is beginning. I know we are about to phase in another 50 Foreign Commercial Service officers, but I don't have a table of the number that are from State. Perhaps Mr. Moorhouse has it?

Mr. MOORHOUSE. Senator, we are prepared to bring in 30 Foreign Service officers from the State Department. They are, of course, on detail to posts overseas, performing their functions.

We will be moving them into the Commerce Department officially on our rolls. We expect that to take place in a month. We have screened through 1,100 applicants interested in a career in the Foreign Commercial Service. We expect by the end of this week that the selection panel will have identified another 15 to 20 candidates to be brought into the career service.

Senator WEICKER. Has there been a reluctance of Foreign Service officers to transfer to Commerce?

Mr. MOORHOUSE. No, Senator. We are actually surprised that we have received as many applications for transfer. Well over 100 Foreign Service officers have sought to be transferred into the FCS, which was considerably more than we were expecting at the outset of the transfer.

Senator WEICKER. Do you feel the transfer has in any way improved the performance of the Foreign Commercial Service?

Mr. MOORHOUSE. We feel with some of the programs that we are getting ready to initiate that, admittedly, it is a phased-in process. There have been probably few dramatic improvements, but we think we are well on the way to providing a better service in order to do a better job.

Senator WEICKER. These personnel are located, where, in the embassies?

Mr. MOORHOUSE. These persons are located in embassies and consulates in 65 countries.

Senator WEICKER. But now under your direction, under the direction of Commerce?

Mr. MOORHOUSE. Yes, sir.

Senator WEICKER. I suppose it is too early to evaluate how they are performing. I was wondering whether this new setup enables you to pursue the commercial side more freely by divorcing yourself from politics and diplomacy?

Mr. MOORHOUSE. Precisely. That is precisely the point. Our commercial staff also has direct access to the ambassador now, which was a problem during the time when the State Department was running the system. Commercial people generally reported through the economic people. That tended to put a more political, diplomatic cast on commercial matters.

FOREIGN CORRUPT PRACTICES ACT

Senator WEICKER. Now what happens, in the sense of the issues presented by the Foreign Corrupt Practices Act? Your people give advice on some of these problems in each particular country?

[Laughter.]

Mr. MOORHOUSE. No.

Senator WEICKER. It seems to me we have a little conflict here going as to what good advice consists of. How do you handle it? I see statements made by officials. A little bit of this is necessary. Here you are the Department of Commerce. You are trying to assist American businessmen. I wonder how this all pulls together.

Mr. O'DAY. We do not give that sort of advice abroad, sir, but we have a complete review underway of the Foreign Corrupt Practices Act, working with the USTR and with Justice. A report on that will be going to the President within about 2 months to identify problems with the ambiguities, the vagueness in the act and suggest, if necessary, any legislative changes. But the basic role of the Foreign Commercial Service is to identify trade opportunities abroad and turn those into sales for U.S. businesses that can compete in those markets.

Senator WEICKER. Do you feel that under-the-table payments or bribery, whatever term you want to go ahead and apply to it, are more the usual standard abroad than they are here in this country?

Mr. O'DAY. I can't answer that on a personal basis, Senator, but obviously in some countries, that is the cultural practice, and to that extent, the U.S. firms may be disadvantaged, but the law is the law, and our officers abroad follow those guidelines and we do not participate in that—in advising along those lines.

I should say that obviously, any payment that is justified as a commission for services rendered is appropriate and in those instances, where that is the local practice, our officers would work that out, not cross over the line to violate our law.

Senator WEICKER. Well, it is a very difficult area. I don't think anybody is going to question that. When do you expect your report to be completed?

Mr. O'DAY. Within 2 months.

Senator WEICKER. I would like to have a copy of that report as soon as it is ready, please.

Mr. O'DAY. Yes, sir.

[The information follows:]

At the April 8, 1981 meeting of the Trade Policy Committee, the administration decided to handle the Foreign Corrupt Practices Act issue within the Committee framework. Consequently, the Department is not preparing a report to the President but is taking an active role within the Committee framework in developing the administration's position. The Committee is expected to make its recommendations to the President within the next few weeks.

FOREIGN COMMERCIAL SERVICE TOURISM SUPPORT

Senator WEICKER. Under Foreign Commercial Services operation, you have requested an increase of $1.1 million and an additional 30 positions. Briefly describe how this will increase tourism and how the 15 markets will operate.

Mr. O'DAY. We are currently completing a plan that will allocate the 30 positions—in countries in which we have FCS offices. Some of them, in addition, will function out of the six U.S. Travel Service offices that are now in place abroad. We will be using our standard management technique for tourism-related work identified in our postcommercial action plans each year and apply that amount of effort.

Thirty people, total, will be dedicated to tourism activities over the course of the year. We see this as a flexible, cooperative working relationship between the dedicated tourism staffs in the six cities where they have offices and the other posts where tourism-related work would be helpful to this program.

Senator WEICKER. This administration makes a point of the fact that the private sector is going to be able to do much of what it is that what we have done heretofore, education, health, transportation, whatever.

Why wouldn't this be an area where the Government can eliminate its activities? Why isn't this an area where the private sector can pick up the ball?

Mr. O'DAY. To some extent, the relationships with Government agencies abroad, and in those instances, it would be appropriate for the U.S. Government to do that work.

Mr. Wells has been in this field for a number of years. I think he could answer in some detail why the Government has a special role in this.

Mr. WELLS. Yes, thank you.

Mr. Chairman, the principal function of the private sector is to promote their own product and service. This they do and do very well. The purpose of the activities of the Travel Service and now the Foreign Commercial Service people, if this proposal is accepted, is to act as a catalyst in promoting just what we were talking about earlier in this session, the entry of companies into the travel industry, small businesses who don't have the funds, the staff, to be able to get into the external markets.

It serves as a catalyst for activities of the States and the cities who more and more are becoming interested in attracting foreign visitors to their regions, but aren't able to maintain offices overseas.

The competition for the foreign visitor is not between companies in the private sector. It is between nations, and the competition for the tourist dollar is tremendous in countries in Europe, South America, and so forth. The tourism programs are geared at acting in a facilitating role in promoting the United States in its entirety, and in assisting, principally, small businesses in this country, in the travel industry.

Senator WEICKER. I don't understand small businesses in the travel industry. No small business is going to set up a travel agency in Frankfurt or Tokyo or wherever. I don't understand how this assists small businesses in the travel industry.

Mr. WELLS. Let me give you an example. We had an instance of a small attraction in California that was interested in trying to crack the Japanese market but didn't know how to do it.

That person came to the U.S. Travel Service and said, "Can you help me get started?" Since we have an office in Tokyo, we were able to present his information to our office in Japan, which was then able to interest three or four major wholesalers in the attraction in California where this individual wanted to get started. We brought these travel agents to the United States on one of our familiarization trips and included this particular destination on the itinerary.

At that point, this gentleman took over. His company was able to show the Japanese what he had available. Soon after that, they were able to get some pages in the tour catalog of the Japanese wholesalers.

Within a year, his business went from literally a few Japanese to the point where about 50 percent of his business is from Japan. He has testified, in fact, before the Congress, that had it not been for the efforts of the travel service, he wouldn't have been able to have the knowledge, expertise, the staff or the money, to go to Japan and be able to do this.

In that sense, we provide assistance. Ninety-nine percent of the businesses in the travel industry are small businesses, and there are over 1 million of them. It is these types of businesses that we are able to provide assistance to.

INTERNATIONAL TOURISM DEVELOPMENT

Senator WEICKER. Under international tourism development, which totals $6.5 million, I have listed $2,983,000 for other services. That is about 45 percent of the total. What does that consist of?

Mr. WELLS. That consists of the programs that are carried on in the field offices, and I will give you an example of four or five of them which total the bulk of the money.

We have product information programs abroad that are principally contracts, let me state that off the bat.

Second, there are payments to other Federal agencies. Those comprise the two issues. Product information programs are contracts in six countries abroad that we are operating, where the firms are hired to publicize information about travel destinations in the United States in the editorial and print media and air media to attract a foreign visitor to come to the United States.

That comprises about $500,000.

In Canada and Mexico, we have consumer information services to provide answers to the many thousands of questions raised by the international visitors considering making a trip to the United States. That is another $350,000.

We have multilingual receptionist programs at 14 ports of entry in the United States to provide interpretive language services to the visitors coming to this country.

That runs $200,000 approximately. We have research contracts that total $100,000.

We have mail house services that provide for distribution of literature in our offices abroad, when people write in and say, "I want information about the United States." The response to that is handled by mail house contractors.

Finally, the last item is payments to the State Department for administrative support. They provide housekeeping and contractual negotiations services, and budgeting services of this type.

The final item is working capital fund charges within our own Department of Commerce for centralized services that are provided.

That makes up probably 80 percent of that figure.

WORLDWIDE INFORMATION AND TRADE SYSTEM

Senator WEICKER. Mr. O'Day, the WITS system has received considerable congressional attention over the past 2 years. It's been the subject of some controversy. What are the administration's plans concerning the future of WITS?

Mr. O'DAY. Mr. Chairman, we have that system under continuing review. Our hope was to have the next phase in operation by fall. We now expect that that will probably take place early in 1982.

We continue to remain committed to the need to bring the whole information process regarding export trade into the 20th century.

We are developing the system as quickly as we can, but with care. We currently have 19,000 companies who have applied to register their products on the system. We have carried out several thousand searches already. It is under continuing review to be sure that as we bring this into a complete operational phase, we have the strongest system to put in place.

Senator WEICKER. Again, here, do you think that the WITS competes with private firms selling the same services?

Mr. O'DAY. It is a major issue. We are in constant contact with a number of private organizations on that. We have an advisory apparatus in the Commerce Department, called the Commerce Technical Advisory Board.

We have proposed using that group of specialists to give us straightforward advice on how to handle this issue.

Perhaps to be more specific on it, let me ask Jonathan Menes, who is managing the WITS system at the moment, to bring you up to date on the very latest contacts with private enterprises?

Mr. MENES. To answer your question precisely, Senator, we issued a request for information following the arrangement that was worked out. We informed both the House and Senate that we would ask the private sector what information they could provide for use in the WITS system.

The responses are being tabulated and analyzed. We will be distributing back to the information industry what we have received, along with an analysis of that, in terms of what would meet WITS' needs. We intend to meet with a group from the information industry in May or June to review this.

Our commitment is to take advantage of those information services or information available in the private sector, not to duplicate it. The goal has always been, in our information services, to supplement and to fill those holes or gaps that exist in the private sector in terms of providing information to exporters.

These gaps, historically, have existed, particularly with regard to the smaller medium-sized firm that doesn't have the capital or its own information-capturing capabilities, let's say, of the larger companies. But we don't intend to duplicate.

EXPORT LICENSING APPLICATIONS

Senator WEICKER. Your justification, under the export licensing applications, cites a large and increasing workload for the processing of export licensing applications.

We understand, however, that you deny less than 1 percent of the applications. Why, then, hasn't consideration been given to reducing the number of applications? Can't the criteria that require an application be adjusted to reflect that which we are actually controlling in the final analysis?

Mr. O'DAY. It's correct that the number of applications, Mr. Chairman, have gone up rather dramatically from 55,000 or so a few years ago to about 75,000 in the most recent year for which we have full data.

The processing of most of these is quite routine. I testified last week on the aircraft industry. I had a special run made of those applications. Of the 500 that we had received in 1980, they were processed in an average of 12 days and in 40 instances, we had requests for special processing, special handling, and we processed those in 2 days. It is a relatively small number of cases that involve sensitive items to Communist countries and under a number of the complicated rules that we have in export administration, cause long delays. This is because we need to clear them with the Defense and State Departments and they often have to be sent to Cocom in Paris for overall review.

But with better than 90 percent of the applications it works rather smoothly. That is not where the problem is.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. I have other questions which I will submit for the record, for response to the record. Thank you very much, Mr. O'Day.

Mr. O'DAY. Thank you, Mr. Chairman.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Soviet Union Export Controls

What lessons have we learned from the implementation of the embargo which could be of value in future situations of this kind?

We have learned from the experience of this embargo that advance consultation with our partners in COCOM is highly advisable to maximize the embargo's effect. We have also learned that if such an embargo is imposed suddenly, as this one was, it severely strains our available resources to administer it effectively.

It has been reported that in contingency planning for a possible Soviet invasion, possible economic sanctions against the Soviets have been discussed.

What would be the role of ITA in monitoring or policing such expanded sanctions?

ITA's role in monitoring or policing expanded sanctions against the Soviet Union would depend upon the type of sanctions decided upon. If they involved further restrictions on exports to the Soviet Union, the Office of Export Administration (OEA) would be responsible for administering such restrictions in the course of its review of export license applications. Policing compliance with such restrictions would be performed by OEA's Compliance Division.

What would be the expanded staff requirements for the agency in such an eventuality?

OEA's additional staff requirements would depend upon the nature and scope of the additional sanctions required. The more extensive and inclusive, the more additional staff resources would be required.

Have you been involved in contingency planning to date?

As one of the government agencies with major responsibilities in export control, ITA has been involved in various interagency discussions of the situation in Poland.

Automobile Imports

What would be the involvement of the ITA should voluntary automobile restrictions be negotiated with the Japanese?

We do not envision the negotiation with Japan of a voluntary restriction on that country's exports of automobiles to the United States. The United States is assembling a delegation, including a representative of ITA, to go to Japan to brief the Japanese Government on the state of the U.S. automotive industry and the domestic measures that the United States Government is undertaking to assist that industry.

Small Business Export Promotion

Last year the Congress passed and the President signed P.L. 96-481 which included the Small Business Export Expansion Act.

Under 96-481 the International Trade Administration is to fund 50 percent of the cost of Small Business Export centers around the country. One million dollars was provided for this program in the Continuing Resolution for 1981.

It is my understanding that this Administration proposes to eliminate this program and use the $1 million appropriated for it to offset the FY '81 pay supplemental. Such action raises several concerns.

Mr. O'Day does ITA currently plan to implement this small business program?

Implementation of The Small Business Export Expansion Grants Program is being deferred in line with President Reagan's desire to reduce the Federal Budget.

What other actions is ITA contemplating to improve export performance by small businesses?

The Department of Commerce intends to pursue vigorously the refinement and expansion of the many existing export assistance programs and services which over the years have proven to be of greatest assistance to the small business community. These include Commercial Exhibitions, Trade Missions and Seminars, World Traders Data Reports, Agent/Distributor Service, Trade Opportunities Program, New Product Information Service, Seminar Program, Product Marketing Service, Export Mailing List Service, Foreign Buyers Program, and the Worldwide Information and Trade System.

In addition to these programs, we will continue to solicit the opinions of the small business community regarding new programs which may be of assistance to potential exporters.

Do you believe ITA's personnel recognize that small businesses require more indepth export information and assistance and are they addressing these small business needs?

It is the policy of this Administration to provide assistance to those most in need of government help. This applies to our export assistance programs in particular. ITA personnel are well aware of this policy.

In this area of export assistance, it is widely recognized that those companies least experienced in overseas marketing need the most help. Over the years our export assistance programs and services have been designed to assist the inexperienced exporter and this Administration intends to refine and improve upon these programs and services. Admittedly, a few larger manufacturers which have concentrated on the domestic market need encouragement

and assistance and our programs are clearly useful to them. However, most inexperienced exporters are small, and it is for these companies that our programs are of the greatest benefit.

Does ITA coordinate its small business export promotion efforts with the Office of International Trade at SBA?

In December 1976, the Department of Commerce and the Small Business Administration entered into a cooperative agreement under which we have coordinated our international trade promotion activities throughout the United States. The purpose of this agreement was to ensure that the Nation's small business community benefited fully from the resources of both Commerce and SBA and that, to the greatest extent possible, duplication of effort was eliminated. The Department of Commerce is working with SBA's Office of International Trade to recast the agreement to reflect the Trade Reorganization and changing priorities of the 1980's.

What do you see as the role of the Small Business Administration in the area of export promotion?

The cooperative agreement between Commerce and the Small Business Administration maximizes the Government's export promotion assistance to small business through (1) joint training to increase appreciation by professionals in SBA and Commerce of the objectives and problems of each in working with small firms; (2) participation in seminars and conferences and joint sponsorship of such events; and (3) shared publications to expand circulation of literature promoting international trade opportunities to small business firms.

Each of these broad categories encompasses many specific opportunities for cooperation that will multiply the trade promotion efforts of both Commerce and SBA and reduce redundancy in their service to small business.

Foreign Commercial Service

Mr. O'Day, in April 1980, pursuant to Reorganization Plan Number III, the Foreign Commercial Service was transferred from the Department of State to Commerce. In part, this agreement calls for a five-year phased transfer of 162 commercial officer positions.

Why was it necessary to phase this transfer of positions from State?

Then Deputy Secretary of Commerce Hodges and Under Secretary of State for Management Read agreed at the time of the reorganization that a phased transfer of positions (over a four-year period) provided the continuity necessary both to prevent disruption in important commercial activities overseas and to allow the FCS to build its own professional cadre of commercial officers.

Do you feel this transfer has in any way improved the performance of the Foreign Commercial Service?

The transfer has clearly improved performance in a number of areas, including status of commercial work in Embassies and Consulates abroad; quality and motivation of commercial officers; effectiveness of commercial programs and priorities; responsiveness to business needs; and availability of new and improved services.

First, FCS brought elevated status to commercial work at posts. The senior commercial officer now reports to the Ambassador or his Deputy. This enhanced status and independence means the FCS now has the ability to set and control priorities focused on commercial objectives. It has also brought a policy decision to shift to posts the responsibility for deciding commercial priorities in individual countries; they are no longer dictated from Washington. The first priority is to respond actively to the needs of U.S. business.

Second, FCS has taken important steps to improve the quality, motivation and effectiveness of the commercial officer corps. In our first year we selected only one-fourth of the over 200 applicants from State and Commerce — choosing only highly qualified and motivated officers. Our choices have been validated by business representatives. These experienced commercial officers have been supplemented by selection of some 20 commercial experts from the private sector. We expect the private sector to supply a much higher proportion in our second round of selection later this year. In addition, we have lengthened the standard tour of assignment, thereby increasing by 50-100 percent the effective experience level of our officers at post.

Third, integration of FCS into the Commerce organization and creation of a management base has permitted important performance improvements. In one of our most valuable programs — the Agent/Distributor Service — we have underway an effort to improve the speed of response (i.e., reduce delays) by up to 60 percent by June 1. This is more possible now than before the transfer because we now share an organizational base in the ITA service system which runs from the 47 district offices around the U.S. to the 124 posts abroad.

Fourth, one of the most important performance improvements has been in our strengthened relationship with U.S. business organizations. A year ago we actively extended to business an offer of a close working partnership aimed at bringing about a first-class service. We meet monthly with some 20 broad-based associations to get their assistance in improving many aspects of FCS performance. Private sector resources are contributing to development of training and in-depth industry orientation programs for FCS officers. The American Chambers world-wide are working with our officers to review priorities for commercial opportunities and efforts in each market. We are looking at ways of mutually reinforcing each other's efforts.

Fifth, the transfer to Commerce and the creation of a central management capability has permitted us to add new services. One is a plan for an FCS "Cooperator" program, fashioned after a very successful concept developed by the Foreign Agricultural Service. This involves a cooperative market development with industry sector organizations willing to commit to locating additional staff and

resources overseas to work more directly with our FCS officers abroad. Another would provide one-stop home-away-from-home business services for small and medium exporters.

What do you perceive as the priority functions of the Foreign Commercial Service?

The overall FCS mission is to promote U.S. commercial and investment interests in 66 countries abroad, particularly expansion of exports of goods and services. Within this broad objective, the FCS has four priority objectives:

1. to assist U.S. business abroad by responding actively to its trade promotion, investment facilitation and commercial information needs;

2. to support export expansion of goods and service through planned promotional events including trade fairs, trade missions, seminars, buyer programs, etc.

3. to promote and protect U.S. commercial and investment interests through active efforts with host governments whenever our commercial opportunities or interests are at stake; and

4. to advocate to U.S. policy makers the concerns and problems affecting U.S. trade and investment interests abroad.

Within these general priorities, the primary FCS emphasis is to delegate to our managers at FCS posts the responsibility for determining how best to use U.S. Government resources for energetic development of U.S. trade, commercial and investment interests, according to the special needs, opportunities and characteristics of each market.

Five specific program priorities are worth mentioning:

1. to follow up on commercial opportunities arising from the Multilateral Trade Negotiation agreements, particularly from the Government Procurement Code;

2. to give close consideration during planning of trade and promotional activities to U.S. industry sectors and products identified by Commerce Department analysis as having highest growth potential in their markets;

3. to increase FCS attention and priorities for tourism; in particular, the FCS will focus on the expansion of the Foreign Buyers Program, which brings groups and individual visitors to major fairs and exhibits in the U.S. and which has proven to be a very effective promotional technique;

4. to conduct an intensive review of important commercial intelligence gathering and informational programs to assure that these programs (Agent/Distributor Service, World Trader Data Report, etc.) operate effectively and economically; and

5. to assure that our services are particularly accessible and beneficial to medium and small U.S. exporters.

Do you believe that it would be helpful to enact into law provisions which would clearly outline the structure and duties of the Foreign Commercial Service?

We have had continuously to adapt the responsibilities of the Foreign Commercial Service to a variety of changing circumstances and demands. We have not found that the absence of such legislation has in any way limited our ability to establish either the structure or definition of responsibilities of the Service. Not only has it proven unnecessary, we believe it more likely would limit our ability to meet emerging needs if the legislation happened not to provide adequate discretionary authority for adjustment. For this reason, we continue to oppose such legislation as being essentially unnecessary and liable to dilute or restrict the use of Foreign Service authorities available under the Reorganization Plan. The Foreign Commercial Service is now well established and already operating in accordance with the purposes for which prior legislation was intended and with the objectives it set forth.

Do you have plans to expand the the personnel resources of the Foreign Commercial Service?

Our FY 1982 budget request is for $35,987,000 and 693 positions. An important provision included in this budget is our request to reprogram to the FCS in FY 1981 5 positions to begin staffing a Headquarters management capability for the FCS. The 1982 budget request reflects Administration plans to give increased emphasis to tourism promotion in recognition of its recent rapid growth, its status as our fourth largest export earner and its additional growth potential. The Department is seeking $1,100,000 and 30 positions for this purpose in the FY 1982 budget. We are currently reviewing long-range requirements for FY 1983 and beyond and will be prepared to handle these requirements through the normal FY 1983 budget process.

Specialized FCS Training

Your budget refers to specialized training for Foreign Commercial Service officers.

What kind of training do these officers need?

Based on extensive discussions with American businessmen, we believe FCS officers and foreign national employees require training in six identified skill areas:

1. commercial skills including finance, marketing, sales;

2. personnel management, including management by objectives, performance evaluations;

3. communication and information management;

4. project management including program evaluation and review techniques, resource management and allocation, budgeting;

5. intercultural skills related to business affairs; and

6. political and economic analytical techniques.

In addition, FCS officers will continue to undergo the traditional language and area studies given to Foreign Service officers.

How does Commerce's training program differ from State's training of their officers?

The State Department does not supply the types of courses listed above in their offerings. The closest equivalent is an economic course which touches on some of the skills defined in the six basic areas but is much more focused on reporting and analysis than in assisting American businesses. Furthermore, a review of courses offered by other Government agencies disclosed that few are taught at the "how to" level. The FCS has surveyed the Department of Agriculture, Office of Personnel Management, Department of Defense, Department of Labor, and the other areas of the Commerce Department; none covering the identified needs.

Worldwide Information and Trade System (WITS)

Mr. O'Day, the WITS system has received considerable Congressional attention over the past two years and has been the subject of some controversy. What are this Administration's plans concerning the future of the WITS system?

Information is the key to increasing exports. Studies and direct feedback from companies all confirm this fact. We also know that many existing programs are somewhat deficient in their ability to provide this information in a timely manner since many are completely unautomated. Information is slow to reach companies that need it and often cannot be located without great effort. This Administration is fully committed to the WITS System, which will bring modern information processing and communications capabilities to our export information activities. Before we move ahead with implementing the existing plans for WITS, however, we believe it is prudent to review carefully the current objectives for WITS and its key features. This review should be completed shortly.

Stage I of the WITS System, which was to go into operation October 1 of this year, has already suffered some delays. We do not believe our review will lead to further delays, but, in fact, may permit us to accelerate our automation of existing programs.

What has been the cost to date of the computerized information system? What are the estimated total costs and date of completion?

The total cost to date for WITS development and operation is $7.5 million. This includes costs incurred in FY 1979 and FY 1980, as well as actual and anticipated expenditures in FY 1981. For FY 1982, $3.0 million has been requested. Expenditures to date have been for: (1) WITS management, (2) system design, (3) data base development; (4) pilot system development and operation; and (5) Stage I system development.

The total cost to develop (WITS) in three stages through FY 1984, by which time the system will be fully operational, is projected at $17.2 million. By FY 1984 the final stages of (WITS) development should be operational.

What is the potential for selling foreign marketing information through WITS to private firms? When will this begin and what is the estimated return to costs? Does the selling of information through WITS compete with private firms selling of comparable services?

The potential for such sales is very high. Commerce has been selling foreign marketing information through its existing information programs for many years. In FY 1980, revenues amounted to $1.3 million. Sales of this information through WITS began on a limited scale in February 1981, covering the nine countries in the WITS Pilot System.

The sales potential is believed to be high, because U.S. firms have indicated in survey after survey that they need more and better foreign marketing information and are willing to pay a reasonable fee for a service that delivers what they want. Especially in demand are specific sales and representation leads abroad; information indicating whether potential customers are interested, capable and reliable; and hard intelligence that pinpoints the most promising markets for their products or services.

WITS will provide this information more quickly, conveniently and efficiently than the existing programs. WITS will thus overcome the principal deficiencies in the existing programs — slow delivery and inadequate product specificity — that have led to user complaints and sales resistance in the past. Users are looking to WITS, with its "instant" access, keyword specificity and "one-stop" convenience as a most welcome improvement. The prospects are very good, therefore, that the high potential for sales of foreign marketing information will be more fully realized through WITS in the future than has been possible to date with the existing programs.

Once WITS is fully developed and deployed (Stage III), the System is expected to recover all of its operating costs associated with providing export information directly to the private sector. ITA's goal is to achieve both high usage and full cost recovery at the earliest practicable date.

Cost recovery will be achieved through fees for:

Registration of a U.S. firm's company and export products. Over 19,000 U.S. firms have already submitted application forms to register some 30,000 of their products in the Pilot System. Charges for such registration will begin in late FY 1981 or early FY 1982.

On-line searches at a client's request. These searches will be conducted by ITA specialists at District Offices, overseas posts, and ITA Headquarters. Fees have already been established for Pilot System searches.

Off-line services on a subscription basis or at a client's request, such as for automatic notices, bulletins, mailing labels and lists, and customized printouts from the central computer. These off-line services will become available through WITS during Stage I (late FY 1982).

Sale of data tapes to State Development Agencies and private sector intermediaries for redissemination to their clients in both on-line and off-line modes. Generation of data tapes will be possible during Stage I (late FY 1982).

In order to minimize the selling of information through WITS in competition with private firms, ITA and the Information Industry Association (IIA) have agreed to develop WITS in the following manner:

- ITA has issued a Request for Information (RFI) to identify existing private sector export information services and their capabilites.
- Based on the RFI findings, ITA will design the WITS data bases to build on existing services where they meet exporters' needs.
- ITA will request an impartial group of experts to review the data base design for compliance with Congressional intent concerning duplication and competition.
- ITA will conduct periodic sunset reviews of government data bases developed for WITS.

Export Licensing Workload

The budget request shows that Commerce's Office of Export Administration has a very high and continually increasing workload for export licensing applications. What isn't brought out in the justification (although it has been cited elsewhere) is that less than 1 percent of the applications are denied.

Considering the new Administration's wishes to cut back in Government regulations and also in the cost of Government, the question quite simply becomes one of why do we design the export control system in a way which causes such a workload for both the Government and industry. It would seem that the Government could lessen the need for such applications, thus reducing the workload for all without hurting controls if so many applications are approved anyhow.

Your justification cites a large and increasing workload for processing export licensing applications. We understand, however, that you deny less than one percent of the applications. Why then hasn't consideration been given to reducing the number of applications? Can't the criteria that require an application be adjusted to more realistically reflect that which we are actually controlling in the final analysis?

Whether effective control is possible is a function of both the technical nature of the commodity and the proposed end user and end use. Consequently, specific and clear guidelines that could release some combinations of equipment and end users are extremely difficult to draw. In the course of the previous Administration's study of export disincentives, proposals were made to eliminate certain licensing requirements in order to reduce the quantity of incoming license applications. One such proposal — to eliminate the need for a U.S. re-export license where we already have approved the same re-export in COCOM — was accepted and the draft regulation is being cleared with other concerned agencies. This should eliminate several hundred license applications annually. The other proposal — to eliminate the 22,000 applications annually for shipment to our COCOM allies — raised Justice Department concerns about hampering potential prosecutions. President Carter decided that this proposal required further study and it now is being reevaluated. These proposals, if implemented, would affect the most routine cases. The time consuming review of complex technical and policy problems, especially those concerning trade with communist countries would remain.

This Administration will review the advisability of eliminating licensing to our COCOM allies, and any other proposal to eliminate licenses from the national security and foreign policy perspectives as well as assessing the impact upon potential prosecutions.

MTN Monitoring

Under International Economic Policy in your budget it appears that the Trade Agreements group will spend considerable time monitoring MTN agreements. What other agencies monitor the agreements?

ITA coordinates the Department's operational responsibility for implementing the non-agricultural aspects of trade agreements. Accordingly, great stress is placed on monitoring and appropriate reporting requirements have been issued to U.S. posts overseas. Reports generated by monitoring activities are used by several agencies, most notably the Office of the U.S. Trade Representative (which needs the information for negotiating purposes) and the Department of Agriculture (which is responsible for agricultural aspects of trade agreements). The Department of State is also involved.

Commerce and Agriculture have primary monitoring responsibility in Washington and carry out most monitoring functions. As mentioned above, many agencies have an interest in using the information generated by monitoring foreign activities under the MTN agreements.

Is there a division of effort among agencies for monitoring MTN developments?

Some distribution of overseas responsibility has been defined between ITA's Foreign Commercial Service and the State Department. However, it is important to maintain a degree of flexibility in assignments and an atmosphere of close cooperation between the two. This will be particularly critical when violations of the MTN agreements are being investigated.

Export Development Activities

Your budget refers to Tailored Export Marketing Plans (TEMPS) for individual firms and selected industry groups.

Does Commerce charge users for its TEMPS program? If not, why? If so, does it recover all costs?

TEMPS recipients are charged $500 (each participant). Since the program to date has been in an experimental phase, we have not attempted to recover all costs. As TEMPS moves to full program status, we have plans to seek full—cost recovery, while not eliminating the availability of the program to the new, small prospective exporter for whom it was developed.

Is the TEMPS program in competition with private market research services?

While some consultants and private market research services have the capability to perform all or part of the TEMPS, few have sought this type of business. Further, the demand for assistance far exceeds the private sector's ability to respond, and private sector charges for these services are prohibitive. One of the greatest deterrents for the small business considering exporting is the lack of capital that can be risked to explore an export venture. The TEMPS program minimizes the costs involved, compared with the high fees of private sector market research services and consultants. The TEMPS also includes a suggested long-term marketing plan and continued counseling assistance by ITA officers until the small exporter is established in the world market. These are services that the private sector could not offer at prices the small, inexperienced exporter could pay.

Reference in your budget (page 25) is made to 90,000 requests in 1980 from U.S. businessmen for overseas marketing information (page ITA-20).

Does Commerce recover any of the costs of providing marketing information through user charges? If so, how much is recovered?

A key function our Country Specialists perform is that of making their expert knowledge of particular markets available to the business community through personal counselling, including responses to inquiries by letter, telephone, and personal visits. A substantial portion of these requests for information come from small businesses and from exporters new to these markets. The Country Specialists are able to answer most of these inquiries by drawing upon their own knowledge and expertise and upon readily accessible information in our country files. For these reasons we do not attempt to assess user charges when we provide this marketing information.

Page ITA-32 states that "this program is designed to develop domestic firms into export-capable entities by focusing on domestic problems and opportunities."

Is this really the purpose of these domestic activities? If so, what is the link between domestic assistance and exports and how is the success of the program measured?

District Office professionals deal with a large variety of business problems in guiding firms into new markets overseas or expanding their foreign market penetration. In working with company managers, our professionals encounter problems involving technology adaptation and transfer; declining productivity, as reflected by uncompetitive costs and prices; business strategy weaknesses; plant location; materials and labor supply difficulties; etc. This is especially true of the small and medium-size firms. Recognizing that solutions to these kinds of business problems make American firms more competitive abroad, and that firms can develop best on sound domestic foundations, we understand our responsibilities to serve companies on these issues.

In summary, the business development activities are the foundation on which we can more effectively and fully develop our international market sales development program. In many cases, the two programs are inseparable in our outreach efforts to the U.S. business community. As such, the measurement criteria used for the international market sales development program are applicable to the business development program. Particularly relevant are the "number of export actions taken by firms counseled" and "the value of initial export sales" as represented below.

With some degree of certainty we can state that export actions and the value of initial exports sales taken by new-to-export firms are in large part the result of a successful business development program.

FY 1980 Activity Measurements

Number of export actions:	
Taken by new-to-export firms	1,615
Taken by new-to-market firms	12,844
Total	14,459
Value of initial export sales (in $ millions):	
Taken by new-to-export firms	$199.3
Taken by new-to-market firms	962.1
Total	$1,161.4

Foreign Commercial Service

One of the reasons for transfer of the Foreign Commercial Service from State to Commerce was that there really wasn't a career ladder for commercial officers in State.

What kind of career ladder and promotion opportunities are available at Commerce?

An important part of the program ITA has developed to increase the level of commercial services available to American business internationally is the upgrading of the level of commercial positions, especially in important markets for U.S. goods and services. The result has already been to increase considerably the number of senior positions to which FCS officers can aspire.

Is this a separate service or is it fully integrated in ITA--with opportunity for transfer and advancement within ITA?

The Foreign Commercial Service is governed under the provisions of the Foreign Service Act of 1980. As a result, most transfers for FCS officers will occur within the FCS. However, the Foreign Commercial Service is fully integrated within ITA on program matters and discussions have begun on means whereby ITA Civil Service and Foreign Service personnel can be exchanged so as to enrich both the domestic and foreign side of the operation.

Policy Planning and Analysis

Please provide a listing of research papers, by subject matter, prepared by your group in FY 1981 and projected to be prepared in FY 1982. Please indicate the relationship between each research paper and policy matter.

Structure and Determinants of U.S. International Trade:

Import Competition from Developed and Developing Nations
Implications for U.S. trade policy — specifically trade preference policies — with developing countries.

Estimates of Penetration in Industrial Country Markets by Manufactured Exports from Developing Countries
Analysis of LDC import competition within the United States permitting increased advance warning of industry-specific trade problems.

World Output and Trade Projections to 1990
Implications of long-term world economic growth for U.S. trade and trade policies.

Wage Levels and Trade Performance in U.S. Manufacturing Industries
Measures of the value and gains from trade and from policies maximizing export competitiveness versus import protection.

The Measurement of Sources of Sectoral Productivity Growth
Causes of productivity growth in the U.S. economy which in turn determine U.S. international competitiveness.

Comparative Advantage and the Structure of U.S. Merchandise Trade
Influence of factors such as capital — and thus U.S. investment-enhancing policies — on U.S. trade position.

Changes in U.S. Import Patterns due to Business Cycle Fluctuations
Implications for assessing U.S. import policies in the short versus long term.

U.S. Manufactures Trade with Developing Countries: Major Trends, 1970-1980
Review of changes in trade structure due to the LDCs, with implications for long-run U.S. trade policies.

The Hedging Effectiveness of Currency Futures Markets
The effect of currency markets on U.S. international traders.

U.S. Foreign Aid and U.S. Exports
Assessment of the link between aid and exports as a guide to possible changes in export markets.

U.S. Exports: Concentration by Firm
Analysis of industry and firm concentration in exporting with implications for export development policy and targeting.

The U.S. Trade Position and International Trade Outlook:

U.S. Competitiveness in World Markets
Summary for policy makers of U.S. trade position, with implications for long-term policy direction.

Staff Forecasts of U.S. Merchandise Trade
Near and medium term U.S. trade outlook to anticipate policy-significant developments.

U.S. Trade in 1980/1981
Summary for policymakers of major U.S. trade developments and factors behind these developments.

World Trade Outlook
Analytic article on trade markets to provide information to U.S. business decisionmakers.

The U.S. Competitive Position
Analysis of changes in U.S. competitiveness over time as a basis for trade policy concern.

U.S.-Western European Trade: Trends and the 1980 Experience
Causes of increased U.S. trade surplus with Europe — to be used as support in U.S. trade policy discussions with European countries.

U.S. and Foreign Industrial Output Relationships
Analysis of economic and trade linkages between the United States and major economies, with implications for overall effects of policy changes.

U.S. Manufactures Market Share
Principal measure of the U.S. international competitive position.

Country and Commodity Market Share Reports
Detailed information on U.S. trade performance by commodity and country, principally for business decisionmakers.

Foreign Economic Performance
Assessment of markets for U.S. exports and determinants of the world trade outlook.

Research and Procedures to Improve Trade Analyses:

Survey of Input-Output Models of the U.S. Economy
Assessment of detailed models to permit selection of those most appropriate to measure effects of trade policy options.

A Box-Jenkins Model for Forecasting U.S. Merchandise Exports and Imports
Procedure for assessing the U.S. international trade outlook.

Measuring Export Prices
Analysis of the most appropriate measures of U.S. export prices.

Improved Exchange Rate Forecasts
Assessment of methods to improve key forecasts in the U.S. trade outlook.

U.S. Trade and the J-Curve Effect
Analysis improving assessment of exchange rate influences on trade flows.

Disaggreate U.S. Trade Forecasting Model
Provide disaggregate trade outlook and simulations of trade policy.

Bilateral and Industry Policy Issues:

Domestic Employment by Sector Related to the Automobile Industry
Support for the Auto Task Force on the effect of auto trade policy on U.S. employment.

The Role of Chemicals in U.S. Export Trade
Trade developments in a major sector of U.S. trade which is principally affected by energy policies.

Rubber Footwear: A Study of Domestic and Import Competition
Assessment of the U.S. industry as affected by three upcoming policy changes.

Analysis and Reconciliation of U.S. and Japanese Data on Bilateral Trade in Semiconductors

Trade data analysis in support of bilateral discussions on semiconductor industry issues.

Bilateral Forecast of U.S.-Japanese Trade
Support analysis for U.S.-Japan Sub-Cabinet Talks.

Analytic Overview of Japanese International Trade
Support for U.S.-Japanese bilateral trade discussions.

Japanese Policies and Programs for the Computer Industry: A Preliminary Review

Background for policy decisions affecting the U.S. computer industry's international competitive position.

European Community Barriers to Trade for Telecommunication Products

Information for policy decisions dealing with U.S. telecommunications industry markets.

Reduced Japanese Auto Exports: The Effect on the Japanese Economy

Support for U.S. discussions with Japanese officials on bilateral auto trade.

North American Trade Agreements Study

Examination of U.S., Canadian and Mexican trade agreements, policies and options, as mandated by Congress in the Trade Agreements Act of 1979.

Export Policy Issues:

Report on the Foreign Corrupt Practices Act

Commerce staff report assessing the Act and its effects on U.S. exports.

Analysis of the GAO study on the Foreign Corrupt Practices Act

Assessment of GAO study, conclusions, and policy recommendations.

Analysis of the Council on Environmental Quality Guidelines Affecting U.S. Trade

Assessment of CEQ proposed designation of regions of global environmental importance.

Regulatory and Programmatic Disincentives to Exporting in Major Foreign Countries

Comparison of regulatory disincentives in major U.S. competitiors with implications on the effectiveness of related U.S. policies.

Analysis of Controlling the Export of Hazardous Substances and Wastes

Analysis of policy alternatives for controlling the export of hazardous substances and hazardous wastes.

Examination of Export Financing Issues

Implications for U.S. exports of Export-Import Bank financing decisions.

Review of Disincentive Effects of Export Controls
Information for export control policy decisions.

Does your group undertake analyses of MTN agreements, commodity and other trade agreements, and resource problems in non-fuel commodities? If so, how does your work differ from that of the trade agreements group?

We do not analyze such agreements.

What is meant by "international sector problems"? What does your group do in this area?

We concentrate analytic and policy formulation resources on specific sectoral areas of key importance to the U.S. international economic position.

We work only on a limited number of industries — or on groups of related industries which we would call a sector — that are specifically designated by the Assistant Secretary for International Economic Policy as having significant international problems. Industry sectors of this type could: (a) have major global structural problems; (b) have exceptional export opportunities or problems; or (c) be affected adversely by imports. For the specifically-designated industry sectors we identify their economic and trade problems and develop alternative policy approaches.

We are working on problems related to automobiles, semiconductors, steel, and telecommunications and computers. In the auto area, we have conducted policy research on the imports of finished cars from Japan as well as on ways to increase exports of U.S. parts to Japan. Most of our work in steel is support for U.S. participation in the OECD steel committee and for the Secretary of Commerce's work as co-chairman of the Steel Tripartite Committee. In the semiconductor field, we have been developing and helping to implement actions that would expand access to the Japanese market (in cooperation with USTR) for U.S. manufacturers.

Is your unit the only one in government concerned with monitoring products subject to Orderly Marketing Agreements? If not, does your work differ from that of other units?

We exercise primary responsibility for monitoring imports under Orderly Marketing Agreements (OMAs) as requested by the U.S. Trade Representative and in accordance with Executive Order 11846 of March 27, 1975, on Administration of the Trade Agreements Program. We monitor the overall operation of the agreements and chair interagency committees dealing with statistical, technical and administrative problems that arise under the OMAs. The Customs Service, the Census Bureau, and the USITC provide statistical support services for OMAs. We reconcile the U.S.-generated data with foreign export data provided under the agreements, evaluate the data, analyze the effectiveness of the import restraint programs and forecast imports.

At present, only two product groups are subject to OMAs — nonrubber footwear and color television receivers. Labor, State,

Treasury, USTR, USITC, Customs and Census are members of the Commerce-chaired interagency committee on nonrubber footwear and color television receivers.

An OMA with Japan on color television receivers expired on June 30, 1980 and was not renewed. An OMA with Japan on a third group of products—specialty steel—expired in June 1979 and was not renewed.

ITA also monitors imports of textiles and apparel under bilateral agreements with 22 foreign suppliers. Technically, these are not OMAs inasmuch as they stem from separate authority specifically related to textile trade agreements (Executive Order 11651 of March 3, 1972).

What are the objectives of the industry sector policy program? How does your research program relate to these objectives?

The overall objective is to identify sectoral economic problems, including trade problems, of designated key industries and develop policy approaches to solve them. Because the office is relatively new most of its policy work has been on short-term problems. For example, in relation to the problems of the automobile industry, we undertook a variety of research projects. We evaluated the relative importance of the domestic and international factors affecting the industry. We have forecast sales, production, imports, and evaluated forecasts made by other private and other public entities. This research is used to arrive at the Department's position on automotive issues, as reflected in the Secretary of Commerce's recent testimony. On the auto parts issue, we worked with the Office of Export Development to identify parts and components that had the best chance to compete in Japanese markets. This work was used to develop a negotiating strategy for lowering Japanese tariffs on these items. The Japanese Diet recently approved the results of the negotiations.

On semiconductor problems, we have examined the trade patterns and trends, the cash flow difficulties of the U.S. industry and looked at some of the structural differences between U.S. and Japanese producers. This type of research has been used to identify changes needed in import classifications, to develop policy positions which will be used to negotiate the early staging of tariff reductions already agreed upon in the MTN, and to determine the relative importance of domestic and international factors to the industry.

We intend to try to conduct longer-range research on industries currently doing well but which might develop serious international problems in the future. We are engaged in active discussions with USTR to develop this type of research program on an interagency basis.

At the bottom of page ITA-43, reference is made to an evaluation in 1981 of "the effectiveness of foreign positive adjustment programs." GAO issued a report on this in 1979 (ID-78-43, January 18, 1979, Vol. 1 and 11).

Are you familar with the GAO review of foreign positive adjustment programs? How does the Commerce study differ from GAO's?

The GAO study is a review of the various techniques used in such industralized countries as Australia, Canada, France, Japan, Sweden, the United Kingdom and West Germany to provide assistance to workers, firms, and communities that are economically affected, and to relate those methods to problem areas in the considerations for Adjustment Assistance under the 1974 Trade Act. The report Commerce refers to will be a summary of techniques used in Japan, Germany and France to help their industries to be competitive internationally.

Textiles and Apparel

There has been an impressive increase in textile and apparel exports in recent years. What role has your program's export expansion program played in this growth?

Currently, only 4 percent of the annual U.S. production of textiles and apparel is exported. The Department of Commerce textile and apparel export expansion program is an industry/government cooperative effort. About 300 U.S. firms have participated directly in trade missions and trade shows abroad. An estimated 12,000 foreign buyers have visited domestic shows and sales rooms in the United States. This direct participation in our trade promotion activities represents only a small share of the 25,000 establishments manufacturing textiles and apparel.

On foreign trade barriers, the Department had some notable successes in modifying, eliminating, or obtaining compensation for newly imposed trade restraints.

In light of the expansion of exports, should not your export stimulation programs be reduced?

Export growth has been called the key to survival by industry leaders. While exports are beginning to increase, we must accelerate our efforts if the United States is to reduce its negative trade balance in textiles and apparel. We have barely begun to explore the export opportunities for textiles and apparel. Latin America and the Far East, to mention two important geographical areas, represent such potential opportunities.

The Textile and Apparel Export Expansion Program is designed to assist new and established exporters to identify, contact, and to do business with customers from foreign countries. It is often the first step taken by domestic firms in exporting in new markets. Therefore, in light of the industry's underdeveloped exporting position and ITA's role in expanding it, the program should not be reduced.

Finance, Investment and Services

One of the 1981 activities described on page ITA-48 is "a comparative analysis of U.S. and foreign export credit practices by key industrial sector."

How does this work relate to the statutorily-required, semiannual report which Eximbank produces on the same subject?

The Eximbank semiannual report compares export credit facilities and practices by country and by type of credit program, but not by sector (except for energy-related products and services). ITA does not duplicate the coverage provided in the Eximbank semiannual report, but draws from it to the extent possible. The Eximbank report is, in effect, a starting point for our sectoral analyses which assess the extent to which various export sectors are affected by the credit climate, and to compare their differences.

At the bottom of page ITA-48, reference is made to work in the export finance area "to establish strategies and mechanisms to allow the United States to eliminate or match foreign concessional export financing."

What has Commerce done in this area?

Commerce is a member of the National Advisory Council on Financial and Monetary Policies (NAC) and other U.S. interagency groups charged with developing positions for U.S. participation in international meetings on export credit. The Secretary of Commerce is a member of the Eximbank Board. ITA helps to develop policy and budget proposals and ensures full consideration of the trade and industry implications of alternatives. We are reviewing various avenues through which competitor nations might be prevailed upon to change financing practices that adversely affect U.S. exports.

How does Commerce's work relate to that of the OECD Group on Export Credits and the Arrangement on Guidelines for Officially Supported Export Credits?

ITA participates as a member of the U.S. delegation to these meetings, as well as contributing to the development of the U.S. position through preliminary meetings of the National Advisory Council on International Monetary and Financial Policies and other interagency groups. We support the U.S. negotiating position by providing commercial and industry-specific expertise.

Since the latest round of international discussions on harmonizing the terms of export credits collapsed in December 1980, how does Commerce propose that the United States match the export financing terms of our competitors?

We are reviewing ways to persuade our competitors to lessen noncompetitive practices. Matching is no longer a feasible option, but others, such as possible Section 301 (Trade Act of 1979) actions against unfair practices, negotiations under the GATT and the Subsidies Code, and other proposals such as one recently made by Senator Heinz to provide a resource pool to be used in the event our attempts to reduce the level of competition in export financing do not succeed, may offer some possibilities. Along with other agencies in the NAC and on the Eximbank Board, we will weigh their pros and cons with a view to devising a workable solution. Meanwhile, we will continue to support U.S. derogations under the arrangement to alleviate the credit squeeze by lengthening the maximum repayment periods when necessary to promote certain kinds of exports.

The objective of ITA review of loans and transactions of the international lending agencies is "...to provide U.S. firms with

the opportunity to obtain the fullest participation possible in foreign procurement." How has such ITA review enhanced U.S. participation in foreign procurement?

ITA represents Commerce in interagency groups developing U.S. positions on loans and policies of the international financial institutions, and provides expertise on trade and industry issues. As a member of such groups, we provide guidance to the U.S. executive directors of these institutions — urging priority for projects with good export potential for U.S. suppliers, ensuring that qualification requirements do not prejudice the selection of U.S. suppliers, and facilitating the flow of information concerning projects to the U.S. business community.

We recently campaigned against a proposal, sponsored by the developing countries, to include price as a criterion for consulting services on World Bank projects because it would have adversely affected the competitive posture of U.S. contractors and consultants and could have contributed to ultimate cost overruns. We are arranging with the U.S. executive directors of the banks to have monthly operational summaries placed on Commerce's WITS system to give potential U.S. bidders advance notice of tenders and other opportunities.

ITA also reviews loans and transactions of the International Monetary Fund. What point of view does ITA bring that is different from that of other agencies?

ITA takes the view that U.S. exporters should receive equal opportunity to engage in international trade with countries receiving aid from the Fund and the international financial institutions. In the Development Coordinating Committee and other U.S. interagency groups that act on development finance issues, Commerce advises on the business and trade implications of proposals, which otherwise might not be considered.

ITA assesses the impact of the U.S. tax structure and policies on American business at home and abroad. Is this function not carried out by Treasury? What is the justification for a separate ITA review?

ITA needs to make a separate review of these issues because the Treasury Department is focused principally on issues such as protection of revenues, the tax system and tax equity, rather than the facilitation of U.S. trade and investment. It has been our experience that even overriding trade policy issues are frequently outweighed in Treasury's assessments when revenue needs are at stake.

Furthermore, we find that businesses often prefer to raise their international difficulties with the tax code with Commerce rather than with Treasury because they regard the latter as an enforcement agency. In view of these problems, ITA cooperates with Treasury both directly and through interagency groups on areas of mutual interest and concern, such as the recent negotiations on the U.S.-U.K. tax treaty. We have been in consultation with Treasury on an ITA-sponsored research contract to find out how the allocation and apportionment rules under section 861 of the tax code are affecting the availability of the foreign tax credit for

R&D intensive U.S. multinationals, and whether this influences them to reduce such R&D or move it abroad.

International Service Industries

Income from services has been a positive and expanding item in the U.S. balance of payments for a long time. In light of the strong and expanding contribution by this sector to the balance of payments with relatively little government assistance, why should ITA expand its international services program?

This program is not being expanded. However, an explanation of its operation and purpose are in order. Although the services side of the balance of payments shows a healthy surplus, the bulk of the positive balance comes from returns on U.S. direct investment abroad. Results in business services—the area on which the ITA program concentrates—is less clear. Some major sectors, e.g., insurance, transportation, and tourism, are in deficit while other service sectors under present balance of payments accounting procedures are counted only partially or not at all. In spite of these uncertainties, it is clear that the international activities of U.S. service concerns are expanding, and they represent a potential offset to our trade deficit on merchandise. To assure that international services' trade and investment activities continue to grow, we must take steps to reduce or eliminate foreign barriers; cooperate with our trading partners in OECD and GATT to identify and deal with common problems; and make sure that U.S. export policies (tax, financing, promotion, etc.) take account of services as well as goods. That is the essence of the ITA services program.

FY 1980 and 1981 Foreign Availability Funding

Section 18(b) of the Export Administration Act of 1979 earmarked $1,250,000 from the Commerce appropriation for each of fiscal years 1980 and 1981 to establish a foreign availability assessment system. However, after the Act was enacted, Commerce made a determination that the $8 million authorization in the Act was too limited to implement both "base programs" and the new requirements imposed on Commerce under the Act such as foreign availability assessment. Commerce was not able to obtain additional funding so the funds authorized for foreign availability were expended for export administration base programs. In 1980, OEA hired three consultants to perform studies on a foreign availability assessment system at a total cost of $40,000.

Why is OEA now requiring $280,000 (page ITA-61) to establish a system to evaluate foreign availability when Section 19(b) of the Export Administration Act specifically earmarked $1,250,000 for each of the fiscal years 1980 and 1981 to establish such a system? How was that money spent?

ITA views the amounts specified under the Export Administration Act as representing maximum amounts to be expended and not requirements that specific amounts have to be spent. This position is consistent with historical precedent whereby actual appropriations fall short of authorization levels and is further supported by the fact that ITA's appropriations included $7.0 million in FY 1980 and $7.5 million in FY 1981 for total Export Administration Act

programs, with both amounts being considerably below the total authorizations ($8 million for FY 1980 and FY 1981) for these same programs. The earmarking in the authorizing legislation was not interpreted to have the effect of leaving OEA with inadequate funds to carry out its principal responsibilities under the Act. Export responsibilities were expanded significantly under the 1979 Act primarily to require OEA to respond more efficiently to the business community requests for export authorization.

During FY 1980, OEA spent approximately $40,000 on consultants, specifically for establishing the foreign availability assessment capability, in addition to normal staff time spent on foreign availability determinations in the course of administering the basic export control program. So far in FY 1981, OEA has spent $30,000 for a National Science Foundation employee to contribute to OEA's foreign availability assessment capability.

The Administration's FY 1982 budget request for $280,000 (appearing on page ITA-61) for the foreign availability assessment capability allows for the phasing-in of this new program.

What efforts has OEA made since the 1979 Act to establish a foreign availability assessment system? What resources were used in those efforts in terms of staff and funds?

OEA has:

1. had the full time services for the past six months of an NSF detailee for preliminary foreign availability planning and implementation. We are currently recruiting a professional for its foreign availability activities.

2. decided, as its initial foreign availability strategy, to identify and utilize existing sources of data and expertise in other government agencies and industry, wherever possible. Informal limited cooperative working agreements have been established with DOE, NASA, and CIA. Other divisions of ITA are also cooperating.

3. developed a foreign availability work statement which at this time is being proposed for an RFP (request for proposal) to explore alternative data monitoring procedures and ways to provide technical support for the production of foreign availability assessments in response to user needs (e.g., OEA and DOE export license reviews, interagency COCOM list preparation activities, DOD's Critical Technology project).

4. distributed almost 200 copies of a summary of three exploratory studies of foreign availability user's needs and potential data sources. Limited additional copies are available from OEA.

5. spent approximately $40,000 during FY 1980 on consultants, specifically for establishing the foreign availability assessment capability, in addition to normal staff time spent on foreign availability determinations in the course of administering the basic export control program.

6. begun a foreign availability review of Very High Speed Integrated Circuit manufacturing equipment as an experimental prototype for future assessment activities. OEA recently provided a quick response to questions concerning the foreign availability of the Kama River iron foundry arc furnaces.

These efforts have been fully supported by the Licensing Division's staff of 46 permanent employees.

The OEA budget justification states that consultants will again be used in setting up a "prototype" system. How will the efforts of these consultants differ from the earlier efforts of consultants OEA used for establishing a foreign availability system and to what extent will they continue to be used after the system is in place?

The three studies of foreign availability funded in FY 1980 were limited efforts to explore the feasibility of establishing a centralized foreign availability assessment system. The conclusions of these studies were generally positive, although all three consultants emphasized the complexity and magnitude of the task. OEA expects to make further use of consultants (with selection not limited to the three earlier contractors) as it explores alternative approaches to monitoring and reviewing foreign availability information in ways that best meet the government's various needs.

Since much of the analysis required for foreign availability assessments is highly technical, it will probably be necessary to supplement the expertise of government experts and TAC (Technical Advisory Committee) members with that of selected outside consultants on a regular basis, especially after a foreign availability system is in place.

Will the requirement of $280,000 go exclusively toward consulting fees?

OEA expects to use the $280,000 to offset service fees (e.g., for membership of the Federal Library Committee's FEDLINK information retrieval network) and for interagency agreements requiring the dedicated services of other agency expertise or support, in addition to paying consulting fees.

Will additional funds be required in the next fiscal year?

OEA will examine the need for additional funds as the scope and magnitude of its foreign availability activities become more defined.

Will the funds cover the establishment of a system for all five of the indicated industry areas?

OEA will support and carry out foreign availability studies in whatever areas are deemed highest priority, and will attempt to be responsive to the needs not only of its own or Department of Energy's licensing officers, but also, for example, to interagency COCOM preparations, and to Department of Defense's Critical Technology project.

When do you expect the system will be fully in place?

We are unable at this time to forecast when the foreign availability system will be fully in place.

GAO Compliance Recommendations

The Commerce Department has not taken effective action on a series of recommendations made in a prior GAO report (Export Controls: Need to Clarify Policy and Simplify Administration; ID-79-16, March 1, 1979) on compliance activities in the Office of Export Administration.

Why haven't you taken action to shift some of your staff efforts to preventive enforcement in order to emphasize stopping illegal shipments of high technology goods before they are lost behind the Iron Curtain?

OEA's Compliance Division's highest priority is preventive enforcement. As part of a reorganization of functions in the Division last year, the responsibility for preventive enforcement (other than the inspection program discussed in the following question) was centralized in the Division's Investigations Branch. Whenever this Branch learns that a potential violation is about to take place, necessary action is taken to thwart the transaction.

Reliable intelligence information is essential to a successful preventive enforcement program, and we have taken steps to enhance our intelligence capability. Last year, certain personnel in the Compliance Division were granted higher level security clearances so they could have access to some of the more sensitive information concerning potentially illegal exports. Further, we have been working closely with the intelligence community to improve the flow of information to the Division. As a result, Compliance personnel now receive regular intelligence briefings and have access to information that was limited in the past.

We are instituting new procedures using personnel in Commerce district offices throughout the United States to aid in our compliance activities. This will include the prevention of illegal exports. This measure, along with our interagency agreement with the U.S. Customs Service to provide seven inspector and investigator staff years to the Compliance Division, should give us adequate staffpower in emergency situations. Time is critical in preventive enforcement cases. We sometimes have only a few hours to locate and detain a questionable shipment and must have personnel throughout the U.S. who can act immediately upon our direction. On the other hand, these cases are relatively few in number and it would not be cost-effective to have Compliance Division personnel at every export point in the U.S.

The foregoing steps, combined with our other preventive enforcement activities (such as overseas pre-license checks and our "licensing screen" that detects suspect names on all incoming license applications) which have been in place for a number of years, provide a reasonably effective preventive enforcement program.

You have an inspection program that operates entirely at JFK airport. How can you expect to present a credible deterrent to potential violators if you have such a marginal inspection program?

Our inspection program does not operate entirely at JFK airport. We have inspectors located both at JFK and in Washington, D.C. These inspectors travel to major export points throughout the United States on a regular basis to examine cargo in order to detect illegal shipments. In addition, the U.S. Customs Service provides inspection capability at any point they cover in the United States or overseas.

If our budget request is approved by Congress, we will place six inspectors on the West Coast. In the meantime, we have made a number of personnel and operational changes that have greatly improved our inspection program. For example, we added four permanent, part-time inspectors to our JFK office; converted the supervisory inspector position at JFK into a working-level supervisory position; instituted weekend and flexible schedules; removed all non-inspection activities from the inspectors' workload; and increased our coverage of major U.S. export points. As a result, the number of illegal shipments detected by the inspection program has increased from 41 in FY 1979 to 89 in FY 1980. During the first six months of FY 1981, 54 illegal shipments have been detected.

GAO studies have shown that your safeguard programs are not effectively monitoring high technology exports once they are put into use abroad. What are you doing to develop a workable and enforceable program?

No system to deter diversions of high technology exports in Soviet Bloc countries will ever be foolproof. However, we believe that our existing safeguard, monitoring and visitation procedures for computer systems have some deterrent effect.

Devising enforceable safeguards is an important part of our license application review process, and where we decide that it is impossible to devise safeguards that we consider sufficient to prevent diversion, we will deny the application.

We receive periodic reports of visitations from exporters and our system is designed to identify and follow-up on delinquent reports. All incoming reports are reviewed by our Computer Division to identify problem areas. Our Compliance Division investigates those cases where diversion appears to have occurred.

Questions Submitted by Senator Hollings

Textile Information Monitoring System

During the last Administration, a computerized Textile Information Monitoring System was developed and is now operational through time sharing arrangements.

What is the status of the procurement of the computer for TIMS?

We have completed all the steps for procurement of the TIMS computer and are ready to sign the contract which is now awaiting final action by the Department's procurement staff.

Do the arrangements for Census operation of the TIMS computer adequately safeguard the priority of the Office of Textiles and Apparel, particularly since all of the Census foreign trade data will also be on this machine?

There is an understanding between the Office of Textiles and Apparel and the Foreign Trade Division of Census that ITA will have priority use of the TIMS computer. We do not foresee any problems in this area.

It is now planned to match import shipments against foreign country export authorizations. Is ITA assured of the necessary cooperation of Customs in this enhancement of TIMS?

At this time, the Customs Service has a problem implementing our proposal because of the increased workload it would create coupled with Customs' limited resources. We are continuing discussions with Customs on this matter to find a mutually beneficial solution. The value of this project lies in the potential for identifying discrepancies in textile import data that may be the result of errors or fraud.

Foreign Commercial Service

Page ITA-8 refers to a need for funds "...to pay lease costs in several countries where the FCS is not located in State-managed space."

In what countries is the FCS not located in State-managed space?

We are not located in State-managed space in six locations overseas: Manila, Bangkok, Nairobi, Baghdad, Milan, and Jidda.

What is Commerce's policy on the location of the FCS?

There are two basic concerns which we have to weigh when we consider where to locate FCS offices overseas. First, we strive to have a close, mutually supportive relationship with other USG representatives at the Embassy, particularly the Economic Section and the Ambassador. This argues for location in Embassies or Consulates although we all recognize that heavy security may

discourage business visitors. On the other hand, we want to be in the middle of the country's commercial activity and so, if the Embassy is not conveniently located, we prefer to situate our offices in the central business district.

Should the FCS be located in centers of commercial trade, but is this not more costly than locating in State-managed space?

As stated above, we are reviewing this question on a case-by-case basis. Generally, it is more expensive to locate in centers of commercial activity than in State-managed space. However, there are situations where State is renting for just as much on a square-foot basis as we would pay elsewhere. In deciding where to locate, these cost factors are considered in addition to the commercial attractiveness of the prospective location.

Worldwide Information and Trade System

What has been the cost to date of the Worldwide Information and Trade System (WITS), and how much is requested in FY 1982 for WITS? What are the estimated total costs and date of completion?

The total cost to date for WITS development and operation is $7.5 million. This includes costs incurred in FY 1979 and FY 1980, as well as actual and anticipated expenditures in FY 1981. For FY 1982, $3.0 million has been requested. Expenditures to date have been for: (1) WITS management, (2) system design, (3) data base development; (4) pilot system development and operation; and (5) Stage I system development.

The total cost to develop (WITS) in three stages through FY 1984, by which time the system will be fully operational, is projected at $17.2 million. By FY 1984 the final stages of (WITS) development should be operational.

What is the potential for selling foreign marketing information through WITS to private firms? When will this begin?

The potential for such sales is very high. Commerce has been selling foreign marketing information through its existing information programs for many years. In FY 1980, revenues amounted to $1.3 million. Sales of this information through WITS began on a limited scale in February 1981, covering the nine countries in the WITS Pilot System.

The sales potential is believed to be high, because U.S. firms have indicated in survey after survey that they need more and better foreign marketing information and are willing to pay a reasonable fee for a service that delivers what they want. Especially in demand are specific sales and representation leads abroad; information indicating whether potential customers are interested, capable and reliable; and hard intelligence that pinpoints the most promising markets for their products or services.

WITS will provide this information more quickly, conveniently and efficiently than the existing programs. WITS will thus overcome the principal deficiencies in the existing programs — slow delivery and inadequate product specificity — that have led to user complaints and sales resistance in the past. Users are

looking to WITS, with its "instant" access, keyword specificity and "one-stop" convenience as a most welcome improvement. The prospects are very good, therefore, that the high potential for sales of foreign marketing information will be more fully realized through WITS in the future than has been possible to date with the existing programs.

What is the estimated return to costs?

Once WITS is fully developed and deployed (Stage III), the System is expected to recover all of its operating costs associated with providing export information directly to the private sector. ITA's goal is to achieve both high usage and full cost recovery at the earliest practicable date.

Cost recovery will be achieved through fees for:

Registration of a U.S. firm's company and export products. Over 19,000 U.S. firms have already submitted application forms to register some 30,000 of their products in the Pilot System. Charges for such registration will begin in late FY 1981 or early FY 1982.

On-line searches at a client's request. These searches will be conducted by ITA specialists at District Offices, overseas posts, and ITA Headquarters. Fees have already been established for Pilot System searches.

Off-line services on a subscription basis or at a client's request, such as for automatic notices, bulletins, mailing labels and lists, and customized printouts from the central computer. These off-line services will become available through WITS during Stage I (late FY 1982).

Sale of data tapes to State Development Agencies and private sector intermediaries for redissemination to their clients in both on-line and off-line modes. Generation of data tapes will be possible during Stage I (late FY 1982).

What has been done to minimize the selling of information through WITS in competition with private firms selling comparable services?

In order to minimize the selling of information through WITS in competition with private firms, ITA and the Information Industry Association (IIA) have agreed to develop WITS in the following manner:

- ITA has issued a Request for Information (RFI) to identify existing private sector export information services and their capabilites.
- Based on the RFI findings, ITA will design the WITS data bases to build on existing services where they meet exporters' needs.
- ITA will request an impartial group of experts to review the data base design for compliance with Congressional intent concerning duplication and competition.

- ITA will conduct periodic sunset reviews of government data bases developed for WITS.

What is the basis for each of the measures of WITS achievements shown on p. ITA-26? (e.g., The number of domestic locations serviced is estimated to double from 10 to 20 in 1982 but the number of U.S. supply leads is estimated at a constant 30,000.)

The basis for each of the WITS measures of achievement is as follows:

Number of Domestic Locations Serviced. By the end of FY 1982, WITS data entry and retrieval service will be fully operational at 20 Department of Commerce District Offices.

Number of Foreign Locations Serviced. By the end of FY 1982, WITS service will be added in 3 countries bringing the total operational countries to 12.

U.S. Suppliers. Approximately 19,000 applications have been received as of March 31, 1981. This total will reach 20,000 by the end of FY 1981. The number of WITS District Office locations is not a significant function of the number of registrations. Registrations primarily come from mass mailings to prospective registrants. In FY 1982, further mailings to users of Commerce programs and to other exporter prospects are planned. These mailings, combined with the additional registrations generated by District Offices and a general growing awareness of WITS, should add another 10,000 U.S. supplier registrations in FY 1982.

U.S. Supply Leads. This number is a direct function of the number of U.S. suppliers. Each U.S. supplier submits an average of 1.3 to 2 U.S. supply leads per company. The 30,000 figure should have been correctly reported as 45,000.

Foreign Customer Reports. This figure is based on the premise that, in FY 1982, WTDR/FTI cables from all posts will be automatically converted into WITS. Thus, while only 12 countries will have on-line terminal entry and search capability, WTDR reports and FTI update data collection from all countries will be entered into WITS in FY 1982.

Foreign Purchase Leads. This number is also based on the premise that all TOP leads in FY 1982 will be automatically converted into WITS. However, regular quarterly purging would leave only 5000 "hot" leads in the system at any one time.

Promotional Events. This figure is based on projections from available event directories and the addition of three countries.

Tourism

How do the total resources requested for tourism in 1982 compare to the program level for 1981?

FY 1981 resources are 75 positions and $8.0 million. The total resources requested for tourism in 1982 are 85 positions and $7.6 million. This request includes 55 positions and $6.5 million under the tourism subactivity for programs carried out by the

Assistant Secretary for Tourism. It also includes 30 positions and $1.1 million under the U.S. and Foreign Commercial Service subactivity for tourism activities to be carried out by the Foreign Commercial Service.

What changes are contemplated in the Department's tourism efforts as compared to the program mounted under the Carter Administration?

In FY 1982, 25 positions and $3.0 million were requested by the Carter Administration for tourism policy functions, research and analysis, tourism program coordination, and technical marketing assistance to regions, states, cities, and the private sector. In addition that request included 30 Foreign Commercial Service positions and $1.1 million to carry out the tourism activities abroad. The current request before the Congress increases the net total by 30 positions and $3.5 million.

What is our balance of payments in tourism and what improvement is expected due to the program requested for 1982?

In Calendar Year 1980, the U.S. international travel dollar account was in deficit by approximately $1.7 billion. This imbalance was down significantly from the previous year's deficit by an estimated 31 percent. In Calendar Year 1981, another 13 percent reduction is expected to bring the deficit down to approximately $1.5 billion. This $1.5 billion imbalance is expected only in the transportation account (the difference between the amounts foreign visitors pay to U.S. carriers and U.S. citizens pay to foreign carriers for transportation to and from the U.S.). The part of the travel dollar account made up by foreign visitors' consumption expenditures in this country versus Americans' spending in other nations is projected to be relatively in balance (or in surplus) for the first time in 1981.

We can expect that the reduction in the international travel dollar account deficit will continue during 1982. Although refined projections for that period have not yet been completed, it is expected that the growth in U.S. travel receipts from foreign visitors will continue to exceed the growth in U.S. travel payments for travel abroad, as has been the case for each of the last 3 years and 7 of the last 8 years.

The USTS contribution to this improvement in the balance of payments for tourism is to serve as a catalyst. USTS brings together U.S. suppliers of tourism-related services and facilities with foreign buyers of the travel products at both the trade and consumer level. In this way USTS carries out its mandate from Congress to increase the numbers and spending of foreign visitors to this country.

Export Administration

Last year the Committee made several recommendations regarding the Office of Export Administration.

How many vacancies does the OEA now have, and how does that compare to the situation we encountered last year?

During the past eight months, the vacancy level in OFA has dropped from over 30 to 1, as of March 15, 1981. Most of the senior positions have been filled for some time. Under the President's budget proposal, in FY 1981 ITA would reprogram to OFA an additional 33 positions, recruitment for which would begin as soon as Congress approves this reprogramming action.

Soviet Union Export Controls

Has the Department completed the investigation of "the extent to which technology and technical data sold to the Soviet Union and the Warsaw Pact countries for peaceful purposes has, in fact, been diverted to facilities engaged directly or indirectly in military R&D or production?"

To date this investigation has not taken place. The Department is willing, however, to undertake such an investigation insofar as resources permit. However, close coordination with the intelligence community will be required and much of the information will have to be provided by them.

Export Administration relies primarily on the intelligence community, with additional assistance from U.S. Government personnel overseas, attache reports and the like to identify Warsaw Pact entities engaged in military research and/or production. We also subject many individual applications to a specific end-user check by Defense and the intelligence community.

What is the Department's overall assessment of the impact of the embargo on trade to the Soviets?

The overall impact of Western post-Afghanistan trade sanctions on the Soviet economy has been small. Their primary result has been to reduce U.S.-Soviet trade by almost 60 percent, thereby retarding the expansion of Soviet trade with the Industrial West as a whole. The most effective element of the sanctions was the partial U.S. embargo on grain shipments which caused delays and higher costs for Soviet purchase of feed and, in the wake of their 1979 crop failure, contributed to a decline in Soviet livestock production. The possible minor adverse effect of the U.S. phosphate embargo on Soviet crop yields was offset by U.S.S.R.'s ability to replace a substantial part of planned U.S. shipments. The greatest impact of high technology controls was in the delay or cancellation of exports for Soviet projects already underway and in cutting off spare parts in sensitive areas such as computers.

Unless the U.S.S.R. intervenes in Poland, the impact of the Western economic sanctions will continue to diminish. The Soviet Union has lined up alternate sources, some on a long-term basis, to replace embargoed U.S. agricultural commodities. Western governments' support for restrictive measures including credits, high level contacts and non-replacement of contracts foregone by American firms, have been on the wane since mid-1980. The main limitation on U.S.S.R. purchases from the West will be in the Soviet hard currency position.

International Trade Administration

We are informed that the Invest in the U.S.A. office is budgeted for 3.5 work years and $144,000. This represents a severe curtailment of this office compared to the 7 professionals and a secretary that manned Invest in the U.S.A. in 1977. Why has this office been so sharply reduced and is the curtailment appropriate in view of our balance of payments situation?

The Invest in U.S.A. office staffing level of 8 appears to be in error and is not documented by the GAO report on Foreign Direct Investment in the United States -- The Federal Role. The 1977 budget request for the Domestic and International Business Administration (a predecessor to the current International Trade Administration) showed a base program level of 6 positions. Subsequently, the Invest in U.S.A. staff was combined with personnel handling outward investment to form the Investment Advisory staff. At the same time, active solicitation of foreign investment was curtailed in favor of a facilitative role that was reactive to specific requests.

Currently, the Investment Advisory staff of the Office of Export Marketing Assistance (Domestic Exporting Assistance line item) has a staff of nine persons ($330,200) working on the facilitation of investment inquiries involving U.S. business or State and local government. All of this staff is available to handle matters related to investments in the United States, or, as necessary, U.S. proposals for licensing and investment opportunities abroad.

During the past year, the workload requirement for this staff was approximately 3¼ work years on investment in the United States, and 5½ work years on foreign investment.

These levels of activity are, thus, appropriate to demand. As demand for facilitating transactions related to investment in the U.S.A. rises, the staff of nine is in place and available to serve those needs.

OFFICE OF PRODUCTIVITY, TECHNOLOGY, AND INNOVATION; NATIONAL BUREAU OF STANDARDS, NATIONAL TECHNICAL INFORMATION SERVICE; PATENT AND TRADEMARK OFFICE

STATEMENT OF ROBERT B. ELLERT, ACTING ASSISTANT SECRETARY FOR PRODUCTIVITY, TECHNOLOGY, AND INNOVATION

ACCOMPANIED BY:

ERNEST AMBLER, DIRECTOR, NATIONAL BUREAU OF STANDARDS
MELVIN S. DAY, DIRECTOR, NATIONAL TECHNICAL INFORMATION SERVICE
RENE D. TEGTMEYER, ACTING COMMISSIONER OF PATENTS AND TRADEMARKS
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WAYNE GALLANT, BUDGET OFFICER, NATIONAL TECHNICAL INFORMATION SERVICE

BUDGET REQUEST

Senator WEICKER. The next request is out of the Scientific and Technical Research and Services; the Patent and Trademark Office.

The amount requested is $250,639,000, an increase of $22,898,000 over the 1982 base. It provides for 4,711 permanent positions. On behalf of this request is Robert Ellert, Assistant Secretary for Productivity, Technology and Innovation.

I will allow Mr. Ellert to introduce those that are accompanying him. Your statement in its entirety will be placed in the record. You can go ahead and proceed in any way you wish.

OPENING STATEMENT

Mr. ELLERT. Thank you, Mr. Chairman. I have a more abbreviated statement. If you prefer, I could read that and hit the highlights. I have with me, Mr. Melvin Day, Director of NTIS, sitting on my left. On my right, Thomas Gary, the Budget Officer from NBS. Next, Dr. Ernest Ambler, from NBS, and Rene Tegtmeyer from the Patent and Trademark Office. As you mentioned, the total amount that we have requested for the organizations reporting to me, which is, of course, the ones we just mentioned is $250,639,000. It is included in two appropriations, a request of $118,961,000 for PTO is included in the salaries and expense account.

The remaining $131,678,000 is included in the Scientific and Technical Research and Services account, and would provide appropriations for NBS, NTIS, and the immediate Office of the Assistant Secretary.

PATENT AND TRADEMARK OFFICE

First, I would like to discuss the Patent and Trademark Office, for which we are requesting a program level for fiscal year 1982 of $118,961,000, which represents a net increase of $1,747,000 over the 1982 base of $117,214,000.

The amount requested will enable the PTO to increase trademark actions, print additional trademarks, conduct a patent search file integrity experiment, and improve our automatic data processing capabilities.

Briefly, these specific programs include the trademark process for which we are requesting an increase of $687,000 and 30 positions. This will enable the office to reduce pendancy and handle higher receipts of trademark applications. To complement the expected increase in receipts and registrations an increase of $195,000 is requested for trademark printing in 1982.

An increase of $1,347,000 is proposed under the executive direction and administration activity to enhance ADP and provide support for the existing program systems, and hardware. A net decrease of $299,000 is proposed for 1982 in the customers services area.

The introduction of more efficient processing, we feel, has generated a savings in this area. In our public service room, a reduction of $65,000 is requested due to anticipated savings resulted from contracting out facilities management of document reproduction services.

The total requested for fiscal year 1982 for data and document retrieval systems is a net decrease of $118,000 under the 1982 base. This net reduction includes a decrease of $389,000 to be realized by reducing the search file reclassification function below its current level and an increase of $271,000 for the search file and integrity program.

OTHER STRS BUDGETS

I now will go on to the proposed budgets for the National Bureau of Standards, the National Technical Information Service, and the Office of Productivity, Technology, and Innovation, which are included in the STRS appropriation.

Specifically, the proposed fiscal year 1982 request would provide for program increases of $22,616,000 and 109 positions. These increases fall directly in the areas of improved industrial productivity and competitiveness and institutional help for the bureaus.

In addition, program decreases of $1,465,000 and 18 positions are proposed.

The STRS request also includes net adjustments to base and built-in changes netting to a decrease of $2,573,000 which includes reductions of $8,883,000, taken as part of the President's plan to reduce Federal spending.

IMPROVED PRODUCTIVITY AND INNOVATION

In the National Bureau of Standards, the administration again has identified support for improved productivity and innovation as a major goal. The National Bureau of Standards has a principal office to carry out this effort. The program increases presented in this budget for manufacturing, metals processing, and chemical reference data deal with areas of promising new technologies where NBS can have an impact.

Increases to the NBS base are also requested to improve the ongoing capabilities of NBS programs which support industry broadly. These increases will enhance the NBS role to develop the basic engineering and technical measurements, standards and data.

NBS PROGRAM INCREASES

Specific program increases are as follows: NBS is requesting an additional $9,736,000 and five positions to provide the first increment toward the purchase of a modern computing system. The budget also provides for an increase of $2 million and 18 positions to continue the program for improving the scientific and technical competence of NBS.

For fiscal year 1982, we are also proposing an increase of $3 million and 31 positions to be used for continuing the effort to establish an Automated Discreet Process Technology Research Facility.

For the NBS materials science program we have proposed an increase of $3,750,000 and 36 positions. In the area of the Nation's basic research, two increases are proposed, first is an increase of $750,000 and seven positions for advanced electrical and frequency standards. An additional $250,000 and three positions will enable NBS to carry out research in advanced optical radiometry.

Eight hundred thousand dollars and eight positions is requested for fluid properties/reference data. An increase of $400,000 is requested for fiscal year 1982 to enable NBS to continue the replacement and refurbishing of aging plant and facilities equipment.

NTIS INCREASES AND DECREASES

In fiscal year 1982, NTIS is requesting $4,472,000 and five full-time permanent positions. This represents an increase of $1,072,000 and a decrease of eight full-time permanent positions from the 1982 base amount.

This budget represents the commitment of NTIS to reduce appropriation support and attain self-sufficiency for all programs by fiscal year 1987.

MAJOR DECREASES

The request reflects major decreases in all ongoing programs and an increase for the lease of computer hardware and conversion of NTIS software.

The Smithsonian science information exchange program request of $1,742,000 represents a decrease of $330,000. This decrease is consistent with the NTIS' plan to make SSIE self-sufficient by fiscal year 1985.

The technology transfer program request of $650,000 is $126,000 below the fiscal year 1982 base. This net decrease encompasses a decrease in the foreign technology utilization program of $276,000.

An increase of $150,000 and one permanent position is requested for the dissemination of patent information program; and finally, in order to enhance the NTIS' ability to attain self-supporting status, we are requesting $1,780,000 for enhancing the computer facilities.

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BUDGET FOR OPTI

Next, I would like to go to the budget for OPTI in the Office of the Assistant Secretary of Productivity, Technology, and Innovation. I would like to point out that Secretary Baldrige made a statement before this committee earlier and explained that we feel that 0PTI was "a good initiative" but we felt that implementation of Federal grants and aid was in the wrong direction.

The Secretary has decided to phase that program out and to put emphasis on productivity through the National Bureau of Standards. The Secretary is also asking for $1 million in the general administration account to do some special studies in 1982, fiscal year.

So accordingly, we have proposed the termination of OPTI's programs for fiscal year 1981 by requesting the following actions: a rescission of $3,370,000 and a reprograming of $1,458,000 to NBS to partially offset the costs associated with the most recent pay raise.

Additionally, the revised budget for fiscal year 1982 reflects a decrease of $10,888,000 resulting from the fiscal year 1981 terminations.

The remaining funds, budget authority of $1.6 million, for fiscal year 1981 and $600,000 for fiscal year 1982, will be used to provide for severance and termination costs for the people to be involved in the planned reduction in force.

PREPARED STATEMENT

Additionally, the budget will provide for central support to the Assistant Secretary for implementation of policies and directions for NBS, NTIS, and PTO. Mr. Chairman, this concludes my statement. My colleagues and I will be pleased to answer any questions that you may have.

[The statement follows:]

STATEMENT OF ROBERT B. ELLERT

I appreciate the opportunity to appear before you this morning as the Acting Assistant Secretary for Productivity, Technology and Innovation to request appropriations for fiscal year 1982 on behalf of the organizations which report directly to the Assistant Secretary. Dr. Ernest Ambler of the National Bureau of Standards (NBS), Mr. Melvin Day of the National Technical Information Service (NTIS) and Mr. Rene Tegtmeyer of the Patent and Trademark Office (PTO) are with me and will discuss specific details of the appropriations requested for their organizations.

The total amount requested for the organizations reporting to my office is $250,639,000 and is included in two appropriations. A request of $118,961,000 for PTO is included in the Salaries and Expenses account. The remaining $131,678,000 is included in the Scientific and Technical Research and Services (STRS) account and would provide appropriations for NBS, NTIS and the immediate office of the Assistant Secretary.

I would like first to discuss the FY 1982 request of the Patent and Trademark Office.

Patent and Trademark Office

We are requesting a program level of $118,961,000, which represents a net increase of $1,747,000, over the 1982 base of $117,214,000. There are three areas in which we are requesting increases for FY 1982. These are (1) an increase of 30 positions and $687,000 to examine the increasing number of trademark applications we are receiving; (2) an increase of $195,000 to print additional trademarks; and (3) an increase of $1,347,000 for an automated trademark information system, and augmentation and maintenance of computer equipment.

There are three areas also in which we are asking for decreases from our FY 1981 budget. These are: (1) a decrease of $299,000 in

customer services; (2) a decrease of $65,000 for the public search room; and (3) a decrease of $118,000 in data and document retrieval systems.

Trademark Examination

The total number of trademark cases in the Office rose to 110,966, a 142 percent increase over the FY 1979 level of 45,782. The average time from the filing of an application to its registration or abandonment rose from under 16 months in FY 1977 to nearly 25 months in FY 1980. The interval between the time the application files and the Office's first action on the application rose from 3.0 months to 11.5 months.

The request for an increase of $687,000 and 30 positions for trademark examination in 1982 would enable the Office to reduce pendency and handle higher receipts of trademark applications. Trademark application receipts are estimated at 55,300 in 1982, an increase of 1,600 over the 1981 level. The requested staff will help to increase first action output in 1982 by 9,400, bringing outputs almost equal to receipts. By 1986, pendency to first action could be reduced to 6.6 months.

Trademark Printing

To complement the expected increase in receipts and registrations, an increase of $195,000 is requested for trademark printing in 1982. The increase will enable the Office to fund the publication for opposition and the printing of registrations on an additional 6,800 trademarks. This is required to insure that printing pendency is not increased due to increased production in the trademark examination area.

Automation and Computer Support

An increase of $1,347,000 is proposed under the Executive Direction and Administration activity. The increase will be used to enhance ADP and provide support for the existing program systems and hardware.

Included in our request is $933,000 to effect a full-scale automation of the trademark operation, $110,000 to augment our existing computer with additional on-line memory to support increased processing requirements and an automated information system; $185,000 to replace minicomputers needed to enhance the data entry capability of our main computer; and $119,000 to maintain and improve existing ADP programs. The trademark automation project is significant as it will deliver substantial benefits to our trademark operation. Besides improving the speed and accuracy of a search of the trademark files, we will eventually be able to reduce the cost to the PTO of printing trademark registrations. Implementation of this second stage of trademark automation will also give us valuable information on how we might be better able to use automation in other PTO operations.

Customer Services

A net decrease of $299,000 is proposed for 1982 in the Customer Services area. The introduction of more efficient processing methods and procedures will generate a savings.

Also included in our budget of $4,456,000 for the Customer Services function is an increase of $203,000 for the replacement of processing equipment critical to fulfilling public order for patent and trademark copies. This equipment has been in use for several years and is in need of replacement. The equipment is deteriorating, malfunctions are increasing and there is insufficient capacity to handle the workload of approximately 12,000 orders daily.

Search Room

In our public search room a reduction of $55,000 is requested, due to anticipated savings resulting from contracting out facilities management of document reproduction services.

Data and Document Retrieval Systems

The total requested in FY 1982 for data and document retrieval systems is a net decrease of $118,000 under the 1982 base. This net reduction includes a decrease of $389,000, to be realized by reducing the search file reclassification function below its current level. An increase of $271,000 is proposed to augment the search file integrity program. This increase will provide for an additional fully controlled search room in FY 1982 and the initiation of an experimental file integrity maintenance effort involving four controlled search rooms.

Controlled search rooms will provide for experimentation with alternative search and file maintenance techniques, (i.e., insertion of a charge card whenever a patent is removed from the file, or the provision of a copying facility in the search room to obviate the removal of documents from the room). The base of information developed through this approach is also essential to the analysis of the file integrity situation and the relationship between search file integrity and quality of examination.

The Examiners' search for prior art is basic to the processing of patent applications. The presumption of validity which accompanies a granted patent is based upon an assurance that the search was complete and no anticipatory disclosure of the claimed invention exists. The extent to which the search file fails to provide the reference materials needed to assure a complete search has been the subject of increasing concern to the PTO.

Recent Developments

I would now like to mention some recent developments which will effect future operations of the PTO.

1. Hiring Freeze

As we have been under hiring freezes during 1981 we will be unable to meet our hiring goals for patent examiners in 1981. However, during 1981 we are using increased overtime to keep production up. If the freeze is lifted we will recruit as many patent examiners as we can and we will hire about 150 more in 1982. The effect of the overtime and the 1982 hiring will be to slow the rate in patent pendency increase. Patent pendency is now about 22 months.

2. Reexamination

The 96th Congress passed the patent policy bill, PL 96-517, which creates a new administrative procedure, reexamination of issued patents, and revises completely the way in which the Office charges fees.

In the past, once a patent was issued, it was beyond the jurisdiction of the Office to take any action other than to correct inadvertent error. Under the new statute, a reexamination may be conducted on any patent where a new issue of patentability has been raised on the basis of prior patents or publications.

The statute requires that the Office implement reexamination by July of this year. It is estimated that eventually up to 3,000 requests to reexamine issued patents will be received by 1983; however, we expect to recoup the full cost in this area through a reexamination fee.

3. Supreme Court Decisions

Within the last few weeks, the Supreme Court has issued two decisions which expand substantially the type of computer programs which qualify for patent protection.

The number of applications which will result from these two decisions is difficult to determine. However, our estimate is that up to 4,000 additional computer program-related applications may be received by 1983.

A third recent Supreme Court decision held that microorganisms may qualify for patent protection. The genetic engineering is quite new and we don't expect more than a few hundred patent applications in this area in the immediate future.

4. Patent Cooperation Treaty

Filings under the Patent Cooperative Treaty are expected to increase particularly when Canada, Belgium and Italy join the Convention. This will bring the total number of signatories to the Treaty to 33.

5. Fee Income

PL 96-517 also completely revises the PTO's fee schedule. Today, our fees are set by statute. In FY 1980, 26 percent of the cost of running the Office was recovered through fees charged to users of PTO services. The new law requires a much higher recovery. Fees for the processing of patent and trademark applications will eventually recover 50 percent of cost. For patents, this will be accomplished through the setting of higher processing fees (which can be adjusted triennially) and imposition of maintenance fees collectible at set times throughout the life of the patent.

Beginning in FY 1981, the continuing costs of the new reexamination

program will be recovered by fees. The act also states that the estimated average cost of performing certain services or furnishing the material must be fully recovered in fees, while direct examination costs, as mentioned above, will be on a 50 percent recovery basis. Reexamination fees are supplemental to the appropriation and will be used immediately to defray the costs of reexamination.

Scientific and Technical Research and Services

Gentlemen, that concludes the discussion of the proposed FY 1982 request for the Patent and Trademark Office. I now will go on to the proposed budgets for the National Bureau of Standards (NBS), National Technical Information Service (NTIS) and Office of Productivity, Technology and Innovation (OPTI) which are all included in the Scientific and Technical Research and Services (STRS) appropriation.

Specifically, the proposed fiscal year 1982 request would provide for program increases of $22,616,000 and 109 positions. These increases fall directly in the areas of improved industrial productivity and competitiveness and institutional health of the bureaus. In addition, program decreases of $1,465,000 and 18 positions are proposed. The STRS request also includes net adjustments to base and built-in changes netting to (-)$2,573,000, which includes reductions of $8,883,000 taken as part of the President's plan to reduce federal spending.

I would now like to briefly describe the major changes affecting each operating organization.

National Bureau of Standards

The Administration has identified support for improved productivity and innovation as a major goal and has designed the National Bureau of Standards as a principle office to carry out this effort. The program increases presented in this budget for manufacturing, metals processing and chemical reference data deal with areas of promising new technologies where NBS can have an impact.

Increases to NBS base are also requested to improve the capabilities of ongoing NBS programs which support industry broadly. These increases will enhance the NBS role to develop the basic engineering and technical measurements, standards and data.

Specific program increases for NBS include the following for fiscal year 1982:

Replacement of NBS Computer

NBS is requesting an additional $9,736,000 and 5 positions to provide the first increment towards the purchase of a modern computing system. The present facility is about 15 years old and can no longer provide adequate ADP support for NBS' scientific and technical programs. It is essential for NBS to have access to a modern computing capability to allow the use of scientific modeling and advanced computational techniques which are necessary to maintain its capability as a first-rate scientific institution.

Technical Competence Building

The FY 1979 appropriation provided for the first time an incremental amount designated for improving the scientific competence of NBS. The FY 1982 request provides for an increase of $2,000,000 and 18 position to continue this program. This program has had a profound effect on the morale and vigor of NBS staff in pursuing forefront

research. It is important for NBS' to stay at the state-of-the-art in science and technology to insure that they will be able to address problems of national concern as they arise.

Automated Manufacturing Test Facility

For FY 1982 we are proposing an increase of $3,000,000 and 31 positions to be used for continuing the effort to establish an automated discrete process technology research facility. This facility will enable NBS to understand the technology and develop the standards necessary for the adoption of automated manufacturing in the small batch discrete parts industry. Congress, in considering the authorization request for FY 1981 directed NBS to initiate this effort by reorienting its resources. Industry has already demonstrated its support of this program by providing four research associates and more are anticipated this year.

Metals Processing

For NBS' materials science program an increase of $3,800,000 and 36 positions is requested. This increment would enable NBS to carry out a research program designed to remove technical barriers to commercial adoption of innovative new metals processing technologies. This will enable higher performance materials to be made at a lower cost and relying less on critical materials that must be imported or are in short supply.

The industries most affected by this research will be the primary metals sector, especially steel and aluminum, automobiles and trucks, aircraft, metallic coatings and platings and aluminum and steel foundaries. This program can produce direct benefits towards the President's policy to improve the country's productivity, innovation and competitiveness.

Basic Research

In the area of basic research, two increases are proposed. An increase of $750,000 and 7 positions for Advanced Electrical and Frequency Standards will enable NBS to conduct the research needed to develop an absolute standard of electrical resistance. An additional $250,000 and 3 positions would enable NBS to carry out research in Advanced Optical Radiometry leading to the development of methodology to accurately measure pulsed light.

Standard Reference Data (SRD)

For the Standard Reference Data program an increase of $800,000 and 8 positions is requested for Fluid Properties - Reference Data. This increment will enable NBS to provide the chemical and petrochemical industry additional high-priority critically evaluated data and predictive techniques for important fluids and fluid mixtures. Small errors in the data on these fluids can result in overdesign which could lead to significant increases in the cost of construction and operation of plants.

Facilities Replacement

The seventh and final area of major program increases is by no means the least important. An increase of $400,000 is requested for FY 1982 to enable NBS to continue to address the need to replace aging plant and facilities equipment. Both the Gaithersburg and Boulder sites are showing signs of deterioration and NBS has not been able to keep pace with the present budget. In order to continue providing support services at an acceptable level of quality and reliability, aging and obsolete plant equipment must be replaced systematically. By timely action, NBS can minimize the life-time cost of maintaining its facilities and, thereby, ensure the operations of essential laboratory support services.

National Technical Information Service

Next I would like to discuss the FY 1982 request for the National Technical Information Service.

For FY 1982 the National Technical Information Service is requesting $4,472,000 and 5 full-time permanent positions. This represents an increase of $1,072,000 and a decrease of 8 full-time permanent positions from the 1982 base amount. This budget represents the commitment of NTIS to reduce appropriation support and attain self-sufficiency for all programs by FY 1987. The request reflects major decreases in all ongoing programs, and an increase for the lease of computer hardware and conversion of NTIS software. Funding for the Government Inventions Program is requested at $300,000 with no permanent positions, a decrease from the FY 1982 base of $252,000 and 9 positions. This decrease is part of a proposed phaseout based on either returning the authority to license government-owned inventions back to the initiating agency or performing the functions by contract with the private sector. The Smithsonian Science Information Exchange Program request of $1,742,000 represents a decrease of $330,000. This decrease is consistent with NTIS' plans to make SSIE self-sufficient by FY 1985.

The Technology Transfer Program request of $650,000 is $126,000 below the FY 1982 Base. This net decrease encompasses a decrease in the Foreign Technology Utilization Program of $276,000. Initial implementation of this program was far more successful than anticipated allowing earlier absorption of appropriation support through product sales. An increase of $150,000 and 1 permanent position is requested for the Dissemination of Patent Information Program which is designed to increase the utilization, by the "shirt-sleeve" engineer, of the wealth of technical information generated by the patent system. Finally, in order to help NTIS continue its self-supporting status we are requesting $1,780,000 for enhancement of the computer facility. Internal operations and

expanding programs require the use of a modern, interactive on-line data base management system to maintain and improve the data processing services for NTIS U.S. industry customers. The upgraded system will enable NTIS to meet industry demands for low cost, high quality and timely products and services now.

Office of Productivity, Technology and Innovation

Next I would like to discuss the proposed budget for the immediate office of the Assistant Secretary, Office of Productivity, Technology and Innovation (OPTI).

Secretary Baldrige in his statement before this Committee on March 25th stated that"

> "The previous Administration initiated a series of Federally-funded programs intended to foster industrial productivity and innovation -- many of them under the direction of the newly created Office of Productivity, Technology and Innovation (OTPI). We feel that this was a good initiative but disagree with the implementation.
>
> We plan to make improved productivity and innovation a major goal of the Department of Commerce but feel that this effort should be carried out by the National Bureau of Standards. The Bureau currently has programs for automated manufacturing, metals processing and reference data for the chemical industry. The private sector does not need grants and Federal aid. It needs a planning and coordinating mechanism along with technical support.
>
> Consequently, we are proposing to eliminate both OPTI as a separate organization and its specific programs for a savings of $10,900,000 in 1982. However, I am asking for an additional $1,000,000 in the special initiatives fund for further

exploration of productivity problems and solutions, and there are initiatives in the NBS budget which would provide measurements and standards for promising new technologies."

Accordingly, FY 1981, the Administration has proposed the termination of OPTI's programs by requesting the following actions: a rescission of $3,370,000 and a reprogramming of $1,458,000 to NBS to partially offset the costs associated with the most recent pay raise. Additionally, the revised budget for FY 1982 reflects a decrease of $10,888,000 resulting from the FY 1981 terminations. The remaining funds (budget authority of $1,600,000 for FY 1981 and $600,000 for FY 1982) will be used to provide for severance and termination costs for the people to be involved in the planned Reduction in Force (RIF). The budget will support the central support to the Assistant Secretary for implementation of policies and directions for NBS, NTIS and PTO.

Mr. Chairman, this concludes my statement. My colleagues and I will be pleased to respond to any questions you may have.

TRADEMARK PENDENCY

Senator WEICKER. You indicated in your testimony that the time it takes to complete action on a trademark by your office is now over 2 years, 25 months, and it actually takes nearly 1 year before you even look at it. The request for 30 positions and $687,000—assuming the increase is granted—it will not help the backlog. It will just about let you stay even with the new cases.

It is doubtful you will be able to staff up sufficiently to make a dent in the backlog if you follow current procedures. What steps have you taken to increase productivity in your operations?

Mr. ELLERT. Mr. Tegtmeyer, would you care to comment on that?

Mr. TEGTMEYER. Senator, we believe that the budget request for fiscal 1982 for the trademark operations will enable us to reduce pendency to lower levels in future years.

Assuming that the increase in receipts of trademark applications follows a pattern of about 3-percent increase per year, the 1982 requested level will enable us to reduce trademark pendency by 5 months in the coming years.

Senator WEICKER. That brings me to the second question. How is it possible that if the number of applications remains constant, 102,500, and the disposals has increased slightly, 87,200 to 88,200, your backlog increases by 13,000, and the pendency period increases from 22.8 to 24.4 months?

Mr. TEGTMEYER. Sir, these are the figures that represent what is happening in the patent examining operation rather than the trademark examining operation.

The numbers that you refer to in the budget are correct.

Senator WEICKER. I don't quite follow your reasoning here. You have got this backlog. You tell me that—whatever procedures there are to help to reduce it. What is going to be different, in other words? What in your procedures is going to change this situation?

Mr. TEGTMEYER. We had increases in 1980 and 1981, and in 1982, we are requesting an addition of $687,000 and 30 positions for trademarks.

The net effort of these increases is to enable the office to reduce trademark pendency and disposals will exceed the number of filings that we anticipate getting in the coming years.

Senator WEICKER. Was the pendency period longer than 25 months a year ago?

Mr. TEGTMEYER. Pendency in 1980 was 24.9 months or approximately 25. In 1981, at the end of the year, we expect it to be about 25.6 months, and then the effects of the hirings will begin to be felt, and pendency should begin to be reduced.

PATENT AND TRADEMARK PENDENCY

Senator WEICKER. Last year, you stated that, "An appropriate definition of prompt pendency is the subject of a study now being planned." You made the same statement this year. If pendency is such a crucial problem, why is this study still in the planning stage?

Mr. TEGTMEYER. We feel that prompt pendency is very important in the trademark operation and that it is necessary for the public to receive early information in regard to the registerability of the marks. Even though the matter is under study, we still have fixed objectives in the trademark examining area to reduce the pendency level down to something near to 13 months for total pendency and something near to 3 months for pendency to the first action.

Senator WEICKER. The problem, as I see it now, is not the pendency problem that relates to the patents and trademarks; it is the pendency problem relating to studying the pendency problem. Where is the study?

Mr. TEGTMEYER. We are looking at automation effects and we have a number of reviews of programs for automating various aspects of the Patent and Trademark Office.

It is hoped that automation and improvements in the printing process and the like might enable us to achieve a pendency of 18 month goal on the patents, which had been our pendency goal in that area, and for trademarks of 3 months to first action and 13 months to disposal.

PATENT POLICY ACT

Senator WEICKER. The Patent Policy Act requires your office to implement patent reexamination by July 1981. You estimate that approximately 3,000 reexamination requests will be received in the next 2 years. How much do you estimate that this will cost?

Mr. TEGTMEYER. We anticipate receiving somewhere between 1,000

and 3,000 requests for reexamination per year once the system becomes operational, and our present estimates are that it will cost a total of approximately $1,500 to handle each request for reexanination.

We are actually expecting about 1,000 requests for reexamination during fiscal year 1982.

Senator WEICKER. Have you established a fee structure?

Mr. TEGTMEYER. We have a proposed fee structure that is out for public comment that was published as part of a proposed ruling change for implementing reexamination in January. We will be conducting a hearing on that matter on April 16, after which we will finally determine fee levels and other aspects of implementing rules for reexamination.

ELIMINATION OF OPTI

Senator WEICKER. The elimination of the Office of Productivity, Technology, and Innovation reduces your direct commitment to productivity by $11 million in fiscal year 1982. The responsibility is being shifted to NBS, but no funds go along with the responsibility. Exactly how does the Department intend to carry out its responsibility to foster industrial productivity and innovation?

Mr. ELLERT. Mr. Chairman, this is something that we have not finally decided yet. How the program will be conducted in the Bureau is still being studied.

However, the programs that were phased out will not be continued. There will be a productivity program, but not the same as the OPTI program which is being phased out.

DECREASE IN FUEL OIL ACCOUNT

Senator WEICKER. I notice one item in your budget justification, small, but it is quite significant, you note a decrease of $66,000 for fuel oil in your overhead account. How did you arrange that one?

Dr. AMBLER. This is less use of oil, more use of gas. Gas service was not interrupted as much as anticipated.

Senator WEICKER. Wouldn't that show up, then, in the line item we are talking about?

Could we have separate accounts for oil and for gas?

Mr. GARY. Adjustments for fuel oil, shown under supplies and materials, and natural gas, shown as a utility expense, are both taken care of in the adjustments to base section of the budget. We offset the fuel oil savings against the adjustment for cost increases on natural gas.

In other words, the Bureau of Standards uses natural gas most of the time. But we do use fuel oil on an interruptible basis when Washington Gas cuts us off. We did not use as much fuel oil as planned because we stayed on gas service for a longer period.

That is the reason.

TRANSFER OF OEA TO GA

Senator WEICKER. Two years ago, the Office of Environmental Affairs was transferred from general administration to NBS. It is now being transferred back.

Last year, Senator Laxalt asked with respect to the Office of Environmental Affairs, "What kind of a yoyo operation are we on with respect to this Office?" It seems like the yoyo is still yoyoing. [Laughter.]

My staff put in that it seems the yoyo is still bouncing. I don't think a yoyo is supposed to bounce. It is supposed to yoyo. [Laughter.]

What is the rationale for the transfer back to the general administration?

Mr. ELLERT. This was a budget transfer to put OEA in with the STRS appropriation since OEA reported to the Assistant Secretary for Productivity, Technology, and Innovation. Since that time, there has been a substantive transfer in that OEA has been shifted completely outside of the OPTI. It is now in the general administration account, both organizationally and in the budget.

It's disposition is now being studied in conjunction with the regulatory aspects of the Department that the Secretary is anxious to take a good hard look at. We may find that there may be some further reorganization in that area, but that is one that the Secretary needs to take a look at.

FEDERAL BENEFITS TO INDUSTRY

Senator WEICKER. We have heard repeatedly that the Federal Government should get out of those areas of activity best handled by private industry. Much of what you do is of direct benefit to private industry, for example, in the continuous process technology field, you estimate that industry sales exceed $160 billion annually.

What is the rationale for keeping the Government involved in these areas, rather than letting the private sector take care of it?

Dr. AMBLER. This program, involving the chemical and petrochemical industry, provides the continuous process industry with fundamental engineering research and data in selected areas in order to enhance the productivity of industry. A second program of this type at NBS is the area of discrete parts manufacturing. This particular industry is made up of about 100,000 different companies, mostly small businesses who are faced with the need to adapt to computer control machines, perhaps adapt to robots and use automation techniques. In both of these programs there is a great deal of technical assistance that they need and we believe we can give them.

ADDITIONAL COMMITTEE QUESTIONS

Senator WEICKER. All right, gentlemen. I have further questions which I would like to have you respond to in writing.

Thank you very much.

Mr. ELLERT. Thank you very much, Mr. Chairman.

Senator WEICKER. Also, Senator Mathias has some questions with regard to the Patent and Trademarks Office he would like to have submitted.

[The following questions were not asked at the hearing but were submitted to the Department for response subsequent to the hearing:]

Questions Submitted by Senator Weicker

Backlog

You indicate in your testimony that the time it takes to complete action on a trademark by your office is now over two years (25 months) and that it actually takes nearly 1 year (11.5 months) before you even look at it. The request for 30 positions and $887,000 should help, but even assuming the increase is granted it will not really help the backlog; it will just about let you stay even with new cases.

Given the general retrenchment in Federal employment, it is doubtful that you will be able to staff up sufficiently to make a dent in the backlog if you follow current procedures.

What steps have you taken to increase productivity in your operations?

Assuming that the PTO can reach the employment levels planned for trademark examiners and clerks in 1982, pendency to first action in that year will return to the 1980 level of 11.5 months and decrease further in succeeding years to 6.6 months in 1986.

Steps have been taken also to increase productivity. These include:

1. Automation efforts. The Trademark Application Monitoring (TRAM) System is being expanded to relieve manual record keeping requirements. Automation of the Trademark Search Files is also planned; and if funding needs are supported, this system should be fully effective in 1984. Automated searching will improve productivity of examiners by about 4,000 cases in a year. More sophisticated equipment such as word processors and on-line computer terminals will also enhance productivity.

2. "Law Firm" Reorganization. In order to alleviate problems with supervision and lines of authority, especially in the clerical staff, a reorganization is planned to organize examiners and the clerks directly supporting them into "Law Firms" with all personnel in each area reporting to the same supervisor. More responsive and productive clerical work is anticipated, which should also improve examiner workflow.

3. Position enhancement. A serious problem with trademark examiner productivity is the attrition rate. About 50% of new examiners will leave within 3 years and 75% within six years. One of the reasons for this enormous loss rate is that the journeyman level of an attorney in most government agencies is a G.S. 14, while the highest level a trademark examiner can achieve without going into management is a G.S. 13.

Therefore many examiners leave for other government agencies, as well as those who leave for private practice. Since an examiner does not reach full productivity for 4-5 years, this loss rate means the PTO must be continually recruiting and training an average of 16% of its attorneys each year (training has been a particular burden recently, since more than 65% of the current examining staff have been with the Office less than 2 years.) An effort is currently under way to restructure the positions to support the higher grade, and thus reduce attrition.

4. Changes in examination procedures. Examination procedures are being studied in order to find more efficient methods for handling applications. A recent improvement of this type is using the telephone rather than writing letters in the case of simple

legal problems. Another change under consideration is the use of paralegals to aid examiners.

Last year you stated that the pendency problems in both patent and trademark applications were subjects of on-going analyses. What did these analyses show?

Studies of an appropriate pendency for patent and trademark applications were initiated during 1980 with the objective of completing them in time for the FY 1982 budget process. Inputs from the patent and trademark bar and the communities they serve drew reactions that the goals which had been set a decade earlier appeared adequate and should remain effective. Both goals were recognized as being the earliest practicable time within which action could be taken or completed on patent or trademark applications without incoming siginficant additional expenses or inefficiencies. It was this rapid turnaround that appeared to be of greatest importance to the users of these systems including those interested in the new technology in patents. Management concern over the increases in pendency being experienced have caused the PTO to cancel the pendency studies and work toward the earlier established goals.

Patent Pendency

How is it possible that if the numbers of applications received remain constant (102,500) and the disposals increase slightly (87,200 to 88,200) your backlog increases by 13,000 (207,031 to 220,631) and the pendency period increases from 22.8 to 24.4 months? (Justification page PAT-4)

The increase in inventory (backlog) of 13,000 is equal to the difference between the number of application receipts projected (102,500) and the number to be disposed of (88,200). Since the number of application receipts projected each month is one-twelfth of 102,500 or 8,500, an increase in inventory of 13,000 applications represents an increase of 1.6 months in the pendency of applications. This is reflected in the 1.6 month difference between the figures of 22.8 and 24.4 cited above. Because of the lag between filing and disposal, and some unevenness in the flow of receipts and disposals over a period of time, this correlation is approximate. Budget estimates of pendency are derived from a mathematical relationship between disposals and pendency which takes into account inventory levels and other factors. It should be noted that the number of applications actually received in 1980 was 105,046, so the 102,500 projection for 1982 may be low.

Pendency Definition

Last year you stated that "an appropriate definition of prompt pendency is the subject of a study now being planned" (PAT-11, FY 1981). You make the same statement this year (PAT-14, FY 1982). If pendency is such a crucial problem, why is this study still in the planning stage? When do you plan to move it?

In the initial phase of this study, reactions of the users of PTO services were received which stressed the importance to them of pendencies which were as short as possible, especially for trademark applications. Since, at present, the 18-month (for patents) and

3-month (for trademark first actions) time frames seem to represent the shortest pendencies toward which the PTO might realistically aspire in the foreseeable future, it was determined to terminate the study in question. It should be noted that whatever pendency level is considered appropriate, the cost of maintaining that level, once it is reached, is the same.

Reexamination Fees

The Patent Policy Act (P.L. 96-517) requires your office to implement patent reexamination by July 1981. You estimate that approximately 3,000 reexamination requests will be received in the next two years.

How much do you estimate that this will cost?

The Office anticipates 1,000 - 3,000 reexamination filings per year, requiring 18 - 54 examiner years of effort respectively. Based on these projections, we have estimated that it will cost approximately $1,500 per reexamination. Periodic studies will be necessary to maintain an accurate fee structure which recovers reexamination costs as required by the statute.

What fee structure have you established for this process?

Proposed Rules were published on January 13, 1981 (Federal Register, volume 46, #8), for public comment. The proposed Rules call for a $1,500 reexamination fee with $1,200 being refunded if the request is denied. Periodic studies will be necessary to maintain an accurate fee structure which recovers reexamination costs as required by the statute. It is difficult, of course, to estimate reexamination costs precisely, since we have no experience with reexamination and the problems that may arise which are not involved in regular examination.

Fiscal Year Limitations

You state that it will be difficult to sustain fee recovery rates specified by P.L. 96-517 unless PTO is granted an exemption from fiscal year limitation on the use of funds. Since you set fees at 25 percent, 50 percent or 100 percent of current cost and leave them for at least three years, I am not sure what the statement means.

For those functions of the PTO where the new statute permits revision of fee schedules only once each 3 years, there will be a problem maintaining the specified recovery rate. Higher operating costs in the second and third years of the 3-year period will throw expenditures and income out of balance. Only by charging a fee large enough to produce a surplus during the first year to offset the deficit during the third year can the recovery rate be maintained on average. In such a case, carry over authority of some type will be needed.

Under the law, would not the use of revenues from fees still have to be provided for in an appropriations Act? If so, why are no-year funds necessary now?

Under P.L. 96-517, revenues from fees will be available to the Commissioner to carry out the activities of the Patent and Trademark Office "to the extent provided for in appropriations Acts." Although we are still in the process of formulating recommendations on the appropriation structure to implement the fee provisions of that public law, there will be a need for authority to carry over funds from one year to another where functions are funded entirely

through collection of fees. In such cases, there must be sufficient cash on hand at the beginning of a fiscal year to cover fixed costs until sufficient fees are received to cover them.

For examining functions, which will be partially fee-supported, carry-over authority will be necessary to alleviate problems which may occur when receipt of fees does not occur in the same fiscal year as work is done and costs are incurred.

Questions Submitted by Senator Hollings

Pendency Studies

You are reporting that in 1982, average patent pendency is expected to reach 24.4 months and trademark pendency to first action, 11.5 months.

In the previous fiscal year, you reported that appropriate pendencies for patent and trademark applications were subjects of on-going analyses at PTO. What were the results of those analyses?

Studies of an appropriate pendency for patent and trademark applications were initiated during 1980 with the objective of completing them in time for the FY 1982 budget process. Inputs from the patent and trademark bar and the communities they serve drew reactions that the goals which had been set a decade earlier appeared adequate and should remain effective. Both goals were recognized as being the earliest practicable time within which action could be taken or completed on patent or trademark applications without incoming siginficant additional expenses or inefficiencies. It was this rapid turnaround that appeared to be of greatest importance to the users of these systems including those interested in the new technology in patents. Management concern over the increases in pendency being experienced have caused the PTO to cancel the pendency studies and work toward the earlier established goals.

Patent Examiner Positions

The Carter budget included 60 new positions for patent processing. President Reagan withdrew that request. Was this request withdrawn for any other reason than compliance with the President's economic recovery program?

The withdrawal of the request for 60 new examiners was based on several factors. First, there is a need to support the President's economic recovery program and reduce Federal employment. As the Secretary pointed out, the average personnel reduction in the Department was 5.3% for non-policy changes, while PTO's was held to 3.2%. Second, the impact of receiving approval for the PTO's 1981 program increases in December 1980 and the impact of operating under partial and full employment freezes for the past year have resulted in a substantial number of vacancies. About 350 new hires will need to be made before additional positions could be filled in 1982. It would be difficult to hire all the 167 examiners during the balance

of the fiscal year. Deferral of consideration of additional patent examiners until 1983 will allow for orderly filling of existing vacancies without a substantial impact on pendency. Third, some of the savings from not filling positions in 1981 has been applied to offsetting the cost of the October 1980 pay raise. The remainder plus other savings is being proposed for reprogramming to keep production of patents at a level near that which was originally projected.

Examiner Overtime

How does the amount being used for increased overtime due to the hiring freeze compare to the amount that would have been spent for additional examiners if there weren't a freeze?

In its budget for FY 1981, the PTO proposed to spend $840,000 on patent examiner overtime, which it would derive from lapsed salaries resulting from normal examiner attrition. At this point, due to the hiring freeze and to absorption of a portion of the pay increase in 1981, the estimate for examiner overtime is now reduced to $400,000.

For FY 1982, the new administration's congressional budget reflects $840,000 for patent examiner overtime. The prior administration's FY 1982 Congressional budget reflected $925,000 overtime funds. It also reflected the fact that with the hiring freeze a large part of the patent examiner hires planned for FY 1981 would have to take place in FY 1982. We anticipate total hiring of about 150 new patent examiners in FY 1982 which is near the PTO's capacity for efficiently absorbing new examiner hires. Further with the addition of fee receipts from reexamination requests to the PTO appropriation the PTO will be near its overtime capacity in the Patent Examining area, which is estimated at $1,800,000 in 1982.

No-year Appropriation

PTO is asking for a no-year appropriation to accommodate a lag between fee income and cost.

How could a lag of 2 years occur? Please explain.

Part of the Office will be operating on a fee-supported basis rather than General Fund supported. For such functions it will be necessary to have carry-over authority to begin each fiscal year; otherwise it might not be possible to meet costs at the beginning of the year.

For examining functions, which will be partially fee-supported, it must yet be determined just how the fee income will be handled in the appropriation Act. If fee income and appropriated funds are treated separately in the Act, carry-over authority will be necessary to alleviate problems which may occur when receipt of fees does not occur in the same fiscal year as work is done and costs are incurred.

Doesn't the proposed language change, authorizing a no-year appropriation, take away congressional control over PTO fee income and its use in PTO operations?

P.L. 96-517 contemplates an appropriation structure in which Congress will be given budget projections based on estimated fee recovery. Congressional oversight and control are assured, since fee income will be available to the Commissioner only to the extent provided for in appropriations Acts.

We are currently examining options on the appropriations structure we will recommend to carry out the intent of P.L. 96-517 that the Patent and Trademark Office better serve inventors and industry.

Fee Recovery Rates

You state that it will be difficult to sustain the fee recovery rates specified by P.L. 96-517 unless PTO is granted an exemption from fiscal year limitations on the use of funds.

Please explain what you mean by this statement. Won't fees be set at 25, 50 or 100 percent of current cost and then fixed for a future period of at least 3 years.

The fact that fees are set to recover 25 or 50 percent of current costs, while fee rates cannot be revised more than once each 3 years, is basic to the need for exemption from fiscal year limitations. During the three years that fees are in effect, costs will undoubtedly increase while the fees, by law, cannot. Therefore recovery rates must be based on the average expected costs to be incurred over the three year period.

Fees may be revised more frequently for 100 percent fee-paid services but even in this case exemption from fiscal year limitations is needed. For such services it will be necessary to have carry-over authority to begin each fiscal year; otherwise it might not be possible to meet ongoing costs incurred at the beginning of the year prior to the receipt of offsetting fees.

Availability of Fees

What is the estimated amount of the fees that will be available to the PTO in 1981 and 1982, and what use will be made of them?

Only the fees for reexamination will be available in 1981 and 1982 under P.L. 96-517. These are estimated at $150,000 in 1981 and $1,500,000 in 1982 and will be used to reimburse the Office for the cost of conducting reexamination. Estimated fee receipts from other activities of $26.7 million in 1981 and $27.0 million in 1982 will be deposited in the General Fund of the Treasury, since the full fee reform specified in PL 96-517 will not be implemented until 1983.

Use of Fee Revenues

How can we carry out 35 USC 42 and appropriate the fee revenue if PTO doesn't tell us what they will be used for?

PL 96-517 provides that, "Revenues from fees will be available to the Commissioner of Patents to carry out, to the extent provided for in appropriation Acts, the activities of the Patent and Trademark Office." There are a number of different ways in which such funding can be handled in an appropriation Act and the manner in

which this provision will be administrated must be resolved before the general fee provisions become operative at the beginning of fiscal year 1983. Regardless of the type of Congressional oversight, the PTO will provide a full explanation of proposed program levels, including those funded wholly or partly by fees.

Authority for Fees Charged by Contractor

You say that fees collected for copy reproduction services are applied to contractor costs and that any excess will be deposited in the General Fund of the Treasury.

What is your legal authority for applying fees collected to contractor costs? Shouldn't this procedure be provided for in the Appropriation Act in accordance with subsection (c) of 35 USC 42 (P.L. 96-517, section 3)?

Legal authority for applying fees to pay contractor costs presupposes that the government charges the fee.

The contractor, and not the PTO, collects the fees for the copy reproduction service. The contractor extracts a fixed cost per copy and the remainder is given to the PTO to deposit in the General Fund of the Treasury. In this manner, all of the fee income derived from this service goes to the Treasury; thus, there is no conflict with the language of 35 U.S.C 42 as it presently is in effect.

The current appropriation language for 1982 does not need to be changed because the full effect of P.L. 96-517 begins in fiscal year 1983. Then, all fees will be credited to the Patent and Trademark Office Appropriation Account and be available to the Commissioner to carry out the activities of the PTO as provided for in Appropriation Acts.

Trademark Pendency to Registration

PTO is now reporting trademark pendency to registration or abandonment. This data was not shown in previous budget submissions. Why is it now important?

The pendency to registration or abandonment (that is, pendency to disposal) was added in order to give a complete picture of the Trademark Operation backlogs. In particular, because of increased workloads and a default on the Trademark printing contract, pendency to disposal has increased dramatically.

Examining Priorities

PTO is requesting 30 positions in the Trademark examination area to alleviate an increasing backlog in applications and to stave off an increase in pendency. Why is a higher priority put on trademark processing as opposed to patent processing, where no new positions are requested?

Trademark pendency has been increasing much more rapidly than patents, going from 3.0 months to first action in 1977 to 11.5 in 1980, a 283% increase. Patent pendency in the same period has increased from 18.9 to 22.6 months, a 20% increase. Also, because of the difference in the size of the operations, the addition of 30 people in 1982 to

Trademarks can reduce pendency, while 30 positions to patent area would have a relatively smaller effect.

Patent First Actions

What would the commensurate increase have to be in patent processing to achieve a similar level of "first action output" equalling annual receipts?

First actions (initial results of the examination) for patent applications do not have the same significance as they do in the case of trademark applications. They are not nearly as indicative of the final results of examination as are trademark first actions. At this point the applicant has no patent right with which to stop infringers. Further, patent applications are maintained in confidence until a patent issues, at which time the PTO publishes the new technology disclosed. Issuance of the patent, to permit disclosure of technology and to grant patent rights, is therefore a much more important event than the first action. Over a few years' period of time, first actions will equal disposals.

To produce disposals approximately equal to application receipts at the 102,500 level by 1985 would require an increase of 120 examiners in FY 1983 and another 20 in 1984. Overtime funding totaling $1.5 million each year through 1985 would also be required and would have to be utilized in part to support reexamination. With these additional resources, pendency would stabilize at approximately 27 months. It should be noted that actual receipts during FY 1980 exceeded the 102,500 projection.

Trademark Pendency

Will the staffing level for trademark processing in 1982 be all that is required to reduce pendency to first action to 6.6 months by 1986?

In addition to the staffing and funds requested for Trademark Examination in 1982, implementation of the trademark automation projects is required to reach 6.6 pendency at the end of 1986. Further, some additional clerical funding may be required in later years as new examiner hires reach full production capacity.

Trademark Registration Treaty

Has the PTO conducted a survey on the domestic impact of the implementation of Trademark Registration Treaty (TRT)?

What impact on workload pendency and cost will implementation of TRT have on future trademark operations at PTO?

The PTO did not conduct a survey of the domestic impact of implementing TRT as requested by GAO. Using experts from the Bureau of Census, four iterations of a survey to collect the information requested by GAO were pilot tested. Due to the complexity of the survey which would be required and the fact that the questions, which would have to be hypothetical in nature, would elicit only speculative information, GAO agreed instead to permit the Department of Commerce to try an opinion survey. The Department con-

tracted with a private contractor for such an opinion survey. While the results showed a slight majority of respondents in favor of the treaty, its limited depth has been criticized. Under TRT, an application can be filed based on "intent to use" whereas, under the present Act, use by U.S. applicants must be "actual use in interstate commerce". If TRT is implemented, this provision would result in an increase in filings. While the PTO has conducted an internal study to estimate this increase, doubts about its reliability remain. Accordingly, the PTO is currently restudying this aspect of TRT implementation.

Trademark Fee Recovery

The provisions of P.L. 96-517 specify a recovery rate of 50 percent of trademark examination and processing. What is the rationale for only collecting 50 percent of trademark costs? Are these costs shared because of some benefit to the American taxpayer?

Although trademark registration provides benefits to the public, the private benefits seem great enough to justify a 100 percent cost recovery. Therefore, the bill submitted by the previous administration provided for 100 percent recovery of trademark examination and processing costs. At the time the bill was submitted, this provision had the support of the private sector. The Subcommittee on Courts, Civil Liberties and Administration of Justice of the House Committee on the Judiciary reduced the recovery rate to 50 percent. No reason for the change was given in the Committee report.

Service to the Public

In view of the previous concerns about conditions in the Search Room, can we be assured that the decrease of $65,000 as well as the new decrease of $299,000 for Customer Services will not lead to further deterioration in service to the public?

Neither the $65,000 reduction to the Search Room nor the $299,000 decrease in Customer Services will lead to deterioration of service. The Search Room reduction is made possible through the contracting of photocopy services in the Search Room, and related to a direct reduction in costs. In Customer Services, a comprehensive review of the functions has resulted in improvements in work procedures and replacement of equipment which will lead to increased productivity.

Questions Submitted by Senator Mathias

Patent Examination

In the patent examining area it is noted that the budget is based on receiving 102,500 patent applications (while approximately 105,000 applications were received last year and the higher filing level is continuing this year) and only disposing of approximately 87,000 applications. How does this budget address the problem of reducing

the time it takes to get a patent if more applications are being received than are being processed?

The problem of patent application pendency is addressed in 1982 by the hiring of additional patent examiners, which is made possible by a 1981 budget increase and relaxation in 1982 of administrative control of hiring. Though the 1982 budget does not reduce pendency directly, both 1981 and 1982 increases provide funding for ADP support of examination, hopefully leading to eventual automation of the patent examiners' search. Serious consideration of efforts aimed directly at reducing application pendency will be given in developing the budgets for 1983 and subsequent years. As noted, application receipts were higher in 1980 than anticipated and experience to date leads to the conclusion that 1981 receipts will be at least as great as 1980. This would cause the average time it takes to obtain a patent to increase to about 23 months at the end of FY 1981. If that rate of application filings continues through FY 1982, the average time it takes to get a patent will increase by another two months.

What is the future impact from receiving more patent applications than are being disposed of on the average length of time a patent application is pending in the Patent and Trademark Office?

As long as the PTO receives more applications than it disposes of, the average length of time a patent application is pending will increase. For every 9,000 application increase to the backlog, pendency time will increase by about one month.

New Fee Legislation

How will the new fee legislation found in P.L. 96-517 help the backlog problem in the Patent and Trademark Office?

The new fee legislation in P.L. 96-517 will not directly affect the backlog situation in the PTO. However, additional resources may be more easily justified with the higher fee recovery rates resulting from the legislation. The fee legislation, as we understand it, reflected an intent to provide necessary resources to the PTO.

Patent Search File

In the past the inadequacy of the patent search files in the Patent and Trademark Office has been raised. It is noted that the reclassification effort to improve these files is decreasing each year with the effort being called for in 1982 approximately one-half the effort expended in 1980. How does this improve the adequacy of the patent search files?

Reduction in the level of reclassification activity will not improve the adequacy of the search files. Examiner involvement in reclassification was reduced to increase examiner disposal output. Also, reclassification resources were diverted to search file integrity. Furthermore, while the effectiveness of the search files and the efficiency with which searches can be conducted will deteriorate even at the present level of classification, it was considered more important to hold down total expenditures and to address patent examination needs, automation and other search file problems considered to be of a more urgent nature.

Trademark Examination

In the past the services in the trademark area have been labelled as "Abominable". Will the 30 new positions provided for in FY 1982 in the trademark area be able to rectify the problems?

The 30 new positions in 1982 will improve the situation in trademarks by reducing the time to first action from 12.3 months in 1981 to 6.6 in 1986, and total pendency time to disposal from 25.6 months in 1981 to 18.6 in 1986. Automation initiatives in both 1981 and 1982 will aid directly in this effort. These estimates certainly reflect improvement in service; but, we will need tolook at additional resources in FY 1983, if the goals of three months to first action, 13 months to disposal, and an adequate level of other service to the public are to be attained.

Travel

It has been reported that the Patent and Trademark Office has been unable to send employees out to speak to various industry, patent bar and inventor groups about the implementation of P.L. 96-517 even when the groups offer to pay travel and subsistence expenses.

Is this correct and if so, why?

The policy on providing speakers for various industry, patent bar and inventor groups, as recently clarified, is that speakers will be provided in appropriate circumstances when the requesting group agrees to pay travel expenses of the employee. In all cases, the PTO employee will travel on PTO travel orders and be subject to all Government-wide travel restrictions, and the approval of the Commissioner will be required.

End-of-year Employee Ceilings

What is the level of the end of year employee ceiling for the Patent and Trademark Office for fiscal year 1981 and is that ceiling adequate to permit the Patent and Trademark Office to hire all the patent and trademark examiners which have been funded in the fiscal year 1981 budget?

The full-time permanent end-of-year employee ceiling for the Patent and Trademark Office for fiscal year 1981 is 2,579. This ceiling will allow hiring of all the trademark examiners but not all of the patent examiners. On the other hand, the Patent and Trademark Office would have difficulty in FY 1981 hiring the number of examiners originally specified in view of general pay raise absorptions and the hiring freeze which delayed recruitment efforts.

Fee Changes per Public Law 96-517

During debate on the Patent Law Amendments Act of 1980, which is now P.L. 96-517, reference was made to the possible adverse affect an increase in patent and trademark fees might have on independent inventors and small businesses. The Regulatory Flexibility Act (P.L. 96-354) was cited in the debate as requiring the Patent and Trademark Office to consider this impact and the possibility of structuring the new fees in a tier system was suggested as a possible solution. Is the Office considering such a tier system? If not, why not?

We are looking at all the possibilities in connection with fees charged independent inventors and small businesses in connection with the Regulatory Flexibility Act. The Congress in enacting the fee provisions in P.L. 96-517 considered the impact of the fee legislation on independent inventors and small business and provided for maintenance fees to hold down the fees associated with obtaining a patent. In addition, a two-tier system could require that any special fees apply also to foreign small business and individual

inventors under the Paris Convention. All of these factors will need to be addressed in the fee-setting procedures.

Questions Submitted by Senator Weicker

SALARY SCALE

Your programs require highly sophisticated expertise in relatively exotic areas of scientific research.

How successful are you in recruiting personnel with the necessary qualifications and background for your jobs?

In the past, NBS has been moderately successful in recruiting personnel with the necessary qualifications and backgrounds for its positions. At the present time, NBS has difficulty attracting and recruiting new talents in some areas of high demand such as chemical engineers, solid state physicists, electronic engineers, computer scientists, and material scientists. In spite of these difficulties, NBS has had some success in hiring staff in these high demand areas as a result of diligent recruitment efforts.

To what extent is your salary scale competitive? Or are your needs so unique that there is little competition for those interested in pursuing these lines of research? In other words - are you the only game in town?

NBS must compete with industry, research laboratories, and academic institutions for outstanding technical and managerial personnel. Although Government salaries typically lag behind industrial pay scales, NBS is still competitive with most universities except for the top talents. The competitiveness of the Government salary in many technical fields often depends upon the degree of experience of the person being recruited. For mid level scientific and engineering positions, requiring moderate experience, Government salaries are generally competitive. Government salaries for entry level jobs enable NBS to sometimes compete for recent graduates with a bachelor's degree but NBS has great difficulty attracting people with advanced degrees and particularly those in high demand areas. NBS is also confronted with the serious problem of competing for highly qualified supervisors and managers from outside the Federal Government at the present pay scale ceilings.

FEDERAL ADP STANDARDS

Your office has responsibility for government-wide ADP standards. The General Services Administration has responsibility for ADP procurement standards.

What are your coordination mechanisms with GSA?

NBS and GSA use a variety of mechanisms to coordinate activities pursuant to carrying out their respective Federal ADP responsibilities. These include (1) maintenance of a continuing

dialogue (e.g. meetings, memos, etc.) between senior NBS/GSA management; (2) formal review of major technical plans and initiatives via established review/comment procedures (e.g. response to Federal Register announcements); (3) informal reviews conducted via meetings and exchange of documents during the early (draft) stages; and (4) staff participation in cooperative technical projects.

NBS INVOLVEMENT WITH OTHER AGENCIES

To what extent do you get involved with the planning and design of the computer requirements of the other advanced scientific agencies of government such as NASA?

NBS is not directly involved in the determination of the computer requirements of agencies. We are, however, actively involved in assisting agencies in selecting and utilizing ADP and related technology to satisfy their requirements. This involvement takes several forms including (1) the development of Federal information processing standards and guidelines; (2) provision of reimbursable technical advisory services; (3) publishing the results of research and studies; (4) conducting technical seminars and workshops, and (5) organization and participation in informal technical working/advisory groups. The technical advisory panel to the NBS Networking Standards Program is an example of such a working/advisory group. This group, composed of representatives of agencies such as DoD, GSA, NRC, DoE, and NASA, advises NBS on (1) the impact of NBS' networking products on agency operations; (2) changes which should be incorporated into networking products that would maximize benefits to agencies; and (3) future networking products that should be developed to meet agency needs.

To what extent has the freeze on computer equipment purchases affected your operation?

The freeze on computer equipment purchases, which was in effect for approximately two months, has had minimal impact on the operation of the Federal ADP Standards Program.

CENTRAL COMPUTING FACILITY

You are requesting $9,736,000 and five positions to fund the first increment towards purchase of a new Central Computing Facility. (Justification page STR-85, Vol III)

How much will this facility cost?

We are requesting funds for acquisition of a new central computing facility and operation of the facility. The cost of the facility (hardware, associated support systems and site preparation) will total $24 million. In addition, an average of $860 thousand in annual operating costs during this five year period will also be needed above our present operating cost.

Over what period of time? (NOTE: The justification, page 86, states it's five-year program, but no total cost is given.)

The computer replacement program will cover a period of five years FY 1982 to FY 1986. Time is needed to adjust to the new technology and phased installation avoids acquiring more capacity and capability than can effectively be used.

In its role as developer of government-wide ADP standards, does NBS have other computer facilities?

Yes, NBS has other computer facilities. Research facilities in the Institute for Computer Sciences and Technology are used to support studies which underlie standards development activities. There are minicomputers used for real-time data acquisition in the scientific and engineering labs. These requirements are of a special nature which cannot be satisfied by a central computing facility.

Is this primarily an "administrative" computer facility?

This computer will not function primarily as an administrative computer. It will be used for large scale models and computations needed for work in radiation, surface measurements, thermodynamics, electronics, fluid mixtures and flow, fire science, materials processing, combustion measurements, and other important programs.

To what extent do you use "programmatic" computers for "administrative" purposes?

The expected percentage use of National Bureau of Standards computing resources for administrative purposes is less than 10 percent.

REIMBURSABLE WORK

How much work does NBS do for other Federal agencies?

In fiscal year 1981, it is estimated that $61.5 million will be obligated for research, development, and supporting services for other Federal agencies.

How many NBS employees are involved in such work? (NOTE: GAO estimates that 40-45 percent of NBS' total funds come from other Federal agencies. There is no exact count of employees supported by these funds.)

The research, development and supporting services for other Federal agencies will support 990 full-time permanent positions in fiscal year 1981. It should be noted, however, that NBS employees do not work exclusively on reimbursable work or on work supported by appropriated funds. The majority of employees divide their effort between the two types of work.

What effect will the budget cuts in other Federal agencies have on your workload?

NBS expects a decrease in work performed for other Federal agencies in fiscal years 1981 and 1982. Accordingly, 147 of the 263 NBS position reduction will fall on other Federal agency supported programs.

Productivity

The elimination of the Office of Productivity, Technology and Innovation (OPTI) reduces your direct commitment to productivity by $11 million in FY 1982. The responsibility is being shifted to NBS, but no funds go along with the responsibility.

How exactly does the Department intend to carry out its responsibility to foster industrial productivity and innovation?

As Secretary Baldrige stated during his appearance before this Committee, improved productivity and innovation will continue to be a major goal of the Department of Commerce. However, with the elimination of OPTI's programs, principal efforts in these areas will be carried out by the National Bureau of Standards (NBS). There are already a number of related programs being conducted at NBS that directly support industrial productivity. Among these are the development of an automated manufacturing support facility, building technology development, studies related to materials processing, and infrastructural support for numerous industries which are dependent upon NBS' improved methods of reference measures.

Also, $1 million is included in the General Administration request for further exploration of productivity problems and solutions.

Environmental Affairs

Two years ago the Office of Environmental Affairs was transferred from General Administration to NBS. It is now being transferred back. Last year, Senator Laxalt asked with respect to the Office of Environmental Affairs:

"What kind of a yo-yo operation are we on with respect to this Office?"

It seems that the yo-yo is still bouncing. What is the rationale for the transfer back to General Administration?

The Department originally proposed an appropriation transfer for the Office of Environmental Affairs from the General Administration (GA) accounts to the Scientific and Technical Research and Services (STRS) appropriation to enable the budgets for all of the offices reporting to the Assistant Secretary for Productivity, Technology and Innovation to be included together for ease of review by the Department, the Office of Management and Budget and Congress. In March 1980 the Department sub-

mitted a Reorganization/Reprogramming request to both the Senate and House Appropriations Committees for the purpose of transferring the Office of Environmental Affairs intact from the Office of the Assistant Secretary for Productivity, Technology and Innovation to General Administration in an effort to centralize the review of regulatory issues in the Office of the Secretary. This action received subsequent concurrence from both committees. However, the 1981 appropriation did not reflect this change. It was therefore necessary to reflect the change again as a 1981 change in the 1982 budget.

OPTI Reduction

The elimination of the Technology, Strategy and Evaluation Program began in FY 1981 and will be completed in FY 1982 (STR-106). Although a relatively small program (9 positions and $1.6 million) you mentioned that a reduction in force (RIF) is necessary. Has the RIF process started?

The revised budgets for FY 1981-82 provide for nine positions and $1.6 million and four positions and $600 thousand respectively for the Office of Productivity, Technology and Innovation (OPTI). Reductions of 25 positions and $4.8 million in FY 1981 and 30 positions and $10.9 million in FY 1982 from the Carter budgets are proposed. Consequently, there may be a need to terminate the employment of most of the staff personnel in OPTI. However, the RIF process has not formally started and probably will not until Congress has completed its action on the 1981 budget proposals.

With the department the size of Commerce, can't jobs be found for such a small number of people?

In order to eliminate an organization completely, it is necessary to terminate the employment of the people associated with its functions. I can assure you that every administrative effort will be made to assist the displaced people in finding other jobs.

Reorganization

Secretary Baldrige testified that the Office of Productivity, Technology and Innovation (OPTI) is being eliminated. What does this reorganization mean to your organizational structure?

The revised budgets for FY 1982 submitted by President Reagan reflects the termination, in FY 1981, of the programs in the Office of the Assistant Secretary. The revised requests for the Scientific and Technical Research and Services appropriation include budget authority to cover program termination costs and provide for staffing related funding to continue policy oversight support for the National Bureau of Standards, the National Technical Information Service, and the Patent and Trademark Office.

Will there be an Office of the Assistant Secretary for Productivity, Technology and Innovation or will the Patent and Trademark Office, the National Bureau of Standards and the National Technical Information Service become organizationally independent?

As stated in the response to the previous question the revised budget request for the Scientific and Technical Research and Services appropriation provides for four positions and related funding to continue policy support for the Assistant Secretary. Additionally, the budget for the Office of the Secretary, General Administration includes four positions and $273 thousand for the Assistant Secretary, Deputy Assistant Secretary and two secretaries reporting directly to them.

There is, however, an on-going review to determine how best to streamline the operations of the Department. No decision has as yet been made in this area.

Last year this Committee did not approve the funds and positions requested to integrate the Smithsonian Science Information Exchange with NTIS. This year you are proposing to continue the program at a reduced level under contractual arrangements. Last year this Committee also urged you to complete the integration feasibility study on the SSIE and to undertake an OMB Circular A-76 cost benefit review.

Have these studies been completed? To what extent is your decision to continue the contractual arrangement rather than proceed with the merger the result of these studies?

The feasibility study on the integration of SSIE within NTIS was completed by the contractor, King Research, Inc., in September 1980. While the study hypothesized that integration might result in some technical advantages, it also concluded that merging the very different operational processes used by NTIS and SSIE would cost at least $2 million. In view of the high cost of integration and the projection of NTIS that the contract with SSIE can be fulfilled on a self-supporting basis by the end of Fiscal Year 1984, the Department determined that prudent fiscal policy requires continuation of SSIE as a contractor to NTIS. Non-fiscal factors favoring this policy are SSIE's 30-year record of proven ability to produce products and services and the concern previously expressed by this Committee to protect the rights and benefits of long-service SSIE employees. When the integration of SSIE with NTIS was under active consideration, the Department planned a review under OMB Circular A-76 to determine which elements, if any, of the integrated system could be performed at reduced cost under contract. The determination to continue SSIE under contract, on an ultimately self-supporting basis, obviated the need for such a review.

What degree of confidence do you have that your planned phase-out of Federal appropriations to the Exchange by 1984 is viable?

After careful study of SSIE operations over 18 months, NTIS has identified a series of specific opportunities for SSIE to reduce its costs for processing research project data and to increase its income from the sale of products and services. These opportunities are detailed in the attached memorandum, "SSIE Fiscal 1982-1983." This memorandum provides SSIE management with an explicit strategy for narrowing the gap between costs and revenues in Fiscal Year

1982 and 1983 to offset planned reductions in support from NTIS. The Department believes that continuation of this strategy will allow SSIE to become self-supporting by the end of Fiscal Year 1984.

SSIE FISCAL 1982-83

Summary

The Smithsonian Science Information Exchange (SSIE) can take action (1) to reduce its costs for processing research project data and (2) to increase its income from the sale of products and services, which should offset the reductions in support to SSIE from the National Technical Information Service (NTIS) without curtailed coverage of Federally funded research or reduced quality of services to users.

The combined effect of these two actions by SSIE's management should result in a net difference estimated at over $300,000 in Fiscal Year 1982 and over $500,000 in Fiscal Year 1983. Estimates for specific reductions in cost and increases in income are shown in the Table on the next page.

This memorandum identifies feasible ways for management at SSIE to realize these economies. A recent NTIS-supported study of the input processing functions at SSIE revealed the difficulties facing that organization in its obligation to operate without Federal subsidy by the end of Fiscal Year 1984. Some of SSIE's problems in becoming fully self-sufficient can be attributed to the collection of research data from agencies, but significant other problems can be attributed to the current processing methods used by SSIE.

Data and results from the earlier study have been used to identify the opportunities presented in this memorandum and to estimate the dollar value associated with each action. We have used well-informed judgements in projecting the net cost reductions and increased sales attainable by the end of Fiscal Years 1982 and 1983.

TABLE

OPPORTUNITIES TO REDUCE COSTS AND TO INCREASE INCOME AT SSIE

WITHOUT CURTAILING COVERAGE OR SERVICE

Source of Cost Reduction	Estimated Amounts FY 82	FY 83
No subject indexing for continued projects	$ 128,000	$ 128,000
Reclassification of indexers and literature analysts	21,000	42,000
Accept indexing done by contributing agencies	26,000	38,000
Estimated Direct Cost Reductions	$ 175,000	$ 208,000
Reduction in Overhead	--	100,000
Estimated Total Cost Reductions	$ 175,000	$ 308,000
Source of Increased Income		
Increased sales, higher prices for "Research Information Search Packages"	$ 16,500	$ 20,500
Increased royalties* (commercial retrieval services)	50,000	60,000
Increased royalties* (domestic and foreign tape leases)	50,000	60,000
Increased charges to NIH for keyboarding research records	7,500	7,500
Sales of excess computer time	15,000	15,000
Development of new information products and services	--	30,000
Estimated Total Income Increases	$ 139,000	$ 193,000
TOTAL CHANGE	$ 314,000	$ 501,000

* This is a Government subvention for a Government derived/owned data base obtained from NTIS.

SSIE's management needs to begin planning now so that it can realize the estimated cost reductions and income increases. In Fiscal Year 1982, for example, to accept indexing terms that are contributed by various Federal agencies, SSIE will need a means of cross-referencing the source-supplied descriptors and keywords to the hierarchical subject terms now in the SSIE database. Management planning also will be important for Fiscal Year 1983 in order for SSIE to achieve the projected reduction in SSIE's overhead costs and to introduce profitable new research information products and services.

Reducing Costs

Three feasible actions can be taken by SSIE's management to reduce the direct costs of processing research data.

1. Discontinue subject indexing for continued projects. About two-thirds of the records received by SSIE are for continued, refunded projects. When the project summary is unchanged, SSIE does no subject indexing; however, if the abstract changes slightly, the project is reindexed, albeit at a unit cost (about $2.50 per project) that is lower than original indexing of new projects. In 1979, SSIE received just over 51,000 continuation project records, and its reindexing cost for these is estimated to have been about $128,000. Reindexing adds negligible, if any, improvement in access to these project records, given that their abstracts (which contain the new or changed terminology) can be searched in a free-text mode on the commercial retrieval services. Machine-aided indexing (MAI) also should be discontinued for these continuation projects, which -- at from .005 to .010 hours per project record -- reduces SSIE's computer requirements by a total of from 256 to 513 hours per year.

2. Achieve a lower salary for indexers and analysts. In Fiscal Year 1980, SSIE's average annual salary for personnel in their Scientific Affairs Division was about $31,780. (SSIE's proposal to the NTIS for registration of research projects is the source of this salary figure.) SSIE has claimed that their annual salaries are at

Government levels and norms but, in fact, this average salary is higher than the normal rate. The NTIS average salary rate for the same type of information worker was $27,995 in Fiscal Year 1980. If SSIE's indexers and literature analysts were paid the NTIS rate, direct labor costs for input processing would be about $42,000 less. The SSIE salary scale for such work should be brought into line with government and industry norms through attrition or, if necessary, reassignments. The estimated cost reductions of $21,000 in Fiscal Year 1982 and $42,000 in Fiscal Year 1983, shown in the Table, assume that 50% of the staff are converted during the first year and the remainder during the second year.

3. Accept indexing terms supplied by agencies. SSIE should accept the scientific and technical indexing terms that it receives for new project records on magnetic tape. SSIE receives about 18,000 new project records on magnetic tape each year. (About 15,000 additional new projects are submitted on hard copy, paper records.) Several agencies -- including DOD, DOE, USDA, and portions of DHHS -- also assign descriptors and keywords to their new project records before these are submitted on tape to SSIE. Despite this contributed indexing, SSIE re-indexes the new project records at a direct cost of about $6.00 per project; at least 6,400 such records are re-indexed each year. Our cost reductions assume that SSIE can accept about two-thirds of these without re-indexing during Fiscal Year 1982 and all without re-indexing in Fiscal Year 1983.

Increasing Income

We have identified five feasible ways that SSIE can increase its income. Our estimate of the total increase is $139,000 for Fiscal Year 1982 and $193,000 for Fiscal Year 1983. When the amounts of this increased income are added to the cost reductions, they offset the reduced subsidy to SSIE from NTIS. The estimates appearing in the Table are explained below.

1. Increased royalty income from commercial retrieval services. SSIE can reasonably project an increase in the royalties that it receives from BRS, DIALOG, and SDC for two reasons. First, the SSIE database is a relatively recent addition to these services, but users are becoming more aware of this information resource; more searching should logically follow users' increased awareness of the database. Second, overall usage of online databases has been increasing in recent years; thus, usage of the SSIE database also should increase as a result of the overall demand for online access to information. The estimates for Fiscal Year 1982 and 1983 are based on Fiscal Year 1981 data, with projections for increased searching and attendent royalty income.

2. Increased royalty income from other organizations leasing magnetic tapes. SSIE can reasonably predict an increase in the royalties that it receives from organizations leasing its database, domestic and foreign. The estimates shown in the table are based on activity for Fiscal Year 1981, with projections for new tape leasing agreements for Fiscal Years 1982 and 1983.

3. Increased charges to NIH for keyboarding. SSIE is under-compensated when it provides data preparation work for agencies, notably NIH, which submits hard copy project records to SSIE and pays to have SSIE keyboard and verify the project data; SSIE needs the resulting machine-readable file for input into its database, but it also provides a copy of the file to NIH for a small fraction of the data preparation costs that it incurs. Commercial data preparation firms charge anywhere from $2.00 to $5.00 per 1,000 characters for comparable services; SSIE receives $.45 per project record. If this service is performed on a large scale at this low price, the subsidy from NTIS to SSIE actually subsidizes NIH. (In January 1979, SSIE had received but not yet registered about 11,000 NIH "subprojects," which had been awarded through block grants.) In our estimate of

$7,500 for income from keyboarding, we have assumed a charge of $3.75 for each of 2,000 project records.

4. Increased income from "Research Information Search Packages." For Fiscal Year 1979, SSIE reported income from its "Research Information Search Packages" at a total of $157,495 with a net income (profit) of $12,342. This part of the SSIE product line involves repackaging of research summaries on various topics, an approach that has been successful in various informaton programs within governmental agencies and in the private sector. We believe that SSIE could realize additional income of about 20% over present levels (1) by aggressively promoting the availability of these packages (with up-to-date promotional catalogs), (2) by creating new packages based on needs, and (3) by increasing the prices of these products by about 10%. The estimated increase in income in the Table for the two years ($16,500 and $20,500) is a minimum target for a forceful marketing program.

5. Sale of excess computer time. In order to reduce the fixed cost of its new computer equipment (IBM 4341), SSIE's management should should consider the sale of excess time as a source of income. Again, our estimated increase in income through this method ($15,000 in Fiscal Years 1982 and 1983) is a reasonable planning figure. The reduced requirement for MAI as a result of (1) accepting source-supplied index terms and (b) not reindexing continuation projects will off-load the computer somewhat in addition to time that should be available outside the prime work shift.

Planning Considerations

As noted in the opening section of this memorandum, SSIE's management needs to begin planning now so that it can achieve the cost reductions and income increases that have been estimated and projected for Fiscal Years 1982 and 1983. To accept indexing terms that are contributed by the various Federal agencies, for example, SSIE will need a concordance or other means of cross-referencing the descriptors and keywords to the subject terms assigned to projects now in the

SSIE database. Further, a personnel plan is needed in order to bring the salary rate for indexers and literature analysts down to the government's norms for these types of workers.

Management planning will be even more important for Fiscal Year 1983. To achieve fully self-supporting status by the end of Fiscal Year 1984, SSIE's managment should begin long-range plans for the following:

- Significant reductions in overhead costs. A reduction of as much as $100,000 has been estimated for Fiscal Year 1983, which might be attained by a 4-to-5 person cut in overhead personnel. Reduction in overhead cost could also be achieved in Fiscal Year 1982, but none has been projected or estimated in the Table.
- Development and sales of new research information products and services. A $30,000 increase in income has been estimated for Fiscal Year 1983, which might be attained through information products that emphasize technological research and that serve American industrial corporations.

SSIE's management also should consider the feasibility of (1) excluding non-Federal research projects from the database, unless the processing of these records is explicitly covered by outside funding, directly by clients, and (2) updating and maintaining selected MAI dictionaries so that manual intervention is minimized for the computer-based indexing of records submitted to SSIE without source-supplied index terms.

Questions Submitted by Senator Hollings

1. *The National Association of Margarine Manufacturers is concerned about a "model regulation" issued to the effect that when margarine and butter adopt metric sizes, the sizes shall be on the scale of 500 grams. Apparently, this board recommendation was formulated without consulting the industry which believes it will be costly to smaller manufacturers.*

   They have asked us to inquire what consumer or other benefit will be gained, as they have not been able to get an answer to that question.

   It is not the policy of the National Bureau of Standards to initiate, develop, or formulate model regulations. The National

Conference of Weights and Measures (NCWM) has the responsibility for formulating "model regulations" affecting the sale of commodities. While conversion to the metric system of measurement is voluntary, should a particular state elect to adopt the "model regulations" issued by the NCWM, then the companies in that state which transfer to metric size containers must adhere to these regulations. The "active" members of this Conference consist of state weights and measures officials who have voting privileges and there are associate members from industry and other interested groups. The National Bureau of Standards serves as executive secretariat for the Conference and provides technical assistance, but the Bureau does not have any voting rights.

While the associate members do not have voting privileges, they have the opportunity to make their views known at the committee meetings as well as the annual July conference. In the case of the margarine industry, the President of the National Association of Margarine Manufacturers has been scheduled to address the Conference on July 14, 1981 to present his views on the NCWM model regulations for the margarine and butter container sizes.

One of the major thrusts of the Conference has been to increase the uniformity and decrease the proliferation of package sizes in many different industries. There is no intent in these model regulations to promote metrication only uniformity, (pound, 1/2 pound) containers will still be acceptable as long as industry decides not to change to metric containers. This is in keeping with federal intent as evidenced by passage of the Federal Fair Packaging and Labeling Act passed by Congress in 1966. Margarine is just one of many commodities that is standardized under the model regulations dealing with the sale of commodities.

2. *As you know, one of the most pressing problems in the Nation today is declining industrial productivity. The Reagan budget has eliminated the Carter program in favor of a $1,000,000 increase in the Secretary's Initiatives Fund.*

What expertise now resides in the Secretary's office to carry out this program?

Despite the elimination of OPTI, productivity is still a major goal of the Department. Instead of the establishment of a new Office it is more fiscally prudent to continue to rely upon the expertise which now exists in the Department of Commerce, especially in the National Bureau of Standards. By providing the $1,000,000 increase in the Initiatives Fund, the Secretary will be able to support efforts to assist productivity problems and solutions though expertise may lie in different bureaus.

3. *For the past several years about 40 percent to 45 percent of NBS' total funds have been provided by other Federal agencies, although your budget does not provide much information on this. We understand that these funds supported hundreds of your staff.*

What effect will the Administration's budget cuts for the Federal agencies who were providing you funds have on your staff?

The total authorized positions for the National Bureau of Standards in Fiscal Year 1981 is 3,094. Approximately 40 percent or 1,239 of these positions are supported by work performed for

other Federal agencies and the public. The Administration's reductions for NBS in fiscal years 1981 and 1982 amount to 263 positions, of which 147 are supported by other Federal agencies. These reductions will occur in areas where support by other agencies is expected to decrease, such as work performed for the Department of Energy and the Consumer Product Safety Commission. NBS does not anticipate that the Administration's budget reductions will have a significant impact on the remaining staff supported by other agency funds.

We understand that the Department of Energy was one of the agencies that provided you a significant amount of funds. Wasn't a large amount of these funds for the purpose of evaluating energy saving inventions submitted by private individuals?

Yes, the NBS has an Office of Energy Related Inventions that is supported by DoE funding. This office receives and evaluates energy related inventions that are submitted by independent inventors and small businesses. These inventions are evaluated by means of NBS contracted firms and consultants, by university professors, and by scientists and engineers both within and outside NBS. The results of these evaluations are reported to the inventors and promising inventions are forwarded to DoE for consideration of support. In fiscal year 1981, the DoE is providing $2,205,000 for the purpose of evaluating energy saving inventions submitted by private individuals.

What impact will DOE budget cuts have on your evaluation on these possible energy saving devices?

NBS does not expect the budget cuts to affect the evaluation of energy-saving devices.

Have any good potential inventions resulted from this program to date?

Since the Office of Energy Related Inventions was established at NBS in May, 1975, nearly 17,000 evaluation requests have been received. Of those received, 8,300 were accepted for evaluation; 650 were candidates for second level evaluation; and 175 were recommended to DOE. During the first half of fiscal year 1981, 1,100 requests have been received; 619 have been accepted for evaluation; 51 have reached second stage evaluation; and 22 have been recommended to DOE.

4. *The General Accounting Office issued a report about a year ago which addressed a problem NBS was having obtaining funds from other Federal agencies for work NBS was, in some cases, required to do but was not allowed to fund by OMB's "lead agency" policy. GAO said that this policy had hampered the Bureau's ability to do its job because NBS had to try to obtain funds from the OMB-designated "lead" agencies.*

What action, if any, has been taken to resolve this problem?

The lead agency issue has for the most part resolved itself as a result of the various Federal agencies developing effective and

efficient mechanisms for working with one another. NBS strives to have an agreement on what the other agency wants us to do and an understanding that the support will last for some time. Under these working relationships, NBS does not believe that it is particularly hampered in its ability to do its job as a result of the lead agency principle.

5. *Last year, during NBS authorization hearings in the House, an official from GSA testified that he did not really know how much government research was being done concerning buildings -- NBS was doing some buildings related research for GSA, HUD, and others at that time.*

Before doing research for other Federal agencies, does NBS ensure that someone else hasn't already done similar research?

When research is done on any subject, there are multiple responsibilities for insuring that there is no inefficient duplication of efforts. The principal responsibility lies with the funding agency which itself is aware of the total resources available to carry out its mission including requirements for new research and only does the latter when it is necessary. The program or project manager is an expert in the field who is intimately familiar with the state-of-the-art and helps insure that there is no duplication of research efforts.

This does not mean that different researchers or agencies do not work on the same or similar problems from different points of view or using different approaches since problems of major importance often require simultaneous exploration of various solutions.

Before work is undertaken by NBS for other Federal agencies, it is reviewed at several managerial levels to ensure that the work meets at least one of the following acceptance criteria. These criteria serve as a deterrent to duplication of effort.

1. The work requires traceability of measurements to the national standards maintained by NBS.

2. The private sector cannot or will not develop test methods for materials, mechanisms, and structures related to items purchased by the Government or important to public interest.

3. Support to other agencies is authorized or mandated by specific legislation.

4. A contract placed outside the Federal Government would result in an unavoidable conflict of interest.

5. Requirements for accuracy of physical constants and properties of materials cannot be met by other sources.

6. NBS has a unique capability required for support services to other agencies.

7. Use of a private sector source by another agency would (a) cause significant and intolerable delays in providing services and results, and/or (b) would result in a higher cost to the Government.

Does NBS distribute the results of research done for one agency to others?

NBS research results are disseminated widely. When work is done for another Federal agency, the principal responsibility for dissemination of the results lies with that agency.

LETTER FROM CONGRESSMAN JOHN J. DUNCAN, REPRESENTATIVE FROM TENNESSEE

MARCH 27, 1981.

Hon. MARK O. HATFIELD,
Chairman, Committee on Appropriations,
1235 Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Please find enclosed a copy of correspondence from Mr. John R. Underwood, security coordinator for the Knoxville Police Department. His letter is concerned with inquiries made by members of your committee about training provided by the U.S. Marshal's Office to Knoxville police for use during the 1982 World's Fair, and is self-explanatory.

I concur with Mr. Underwood's contention that the scuba diving training provided by the Marshal Service was both reasonable and necessary considering that the World's Fair site is adjacent to the Tennessee River. It is conceivable that accidents could result due to these circumstances, and I think that the police department has demonstrated considerable foresight by taking steps to prepare itself.

Therefore, I request that Mr. Underwood's letter and the attached information be included in the record of the committee's deliberations on this question. Thank you for your assistance in this matter of importance to my district.

Sincerely,

JOHN J. DUNCAN,
Member of Congress.

LETTER FROM JOHN R. UNDERWOOD, SECURITY COORDINATOR, KNOXVILLE POLICE DEPARTMENT

MARCH 19, 1981.

Hon. JOHN J. DUNCAN,
2458 Rayburn Building,
Washington, D.C.

DEAR CONGRESSMAN DUNCAN: Please find enclosed a copy of a newspaper article which appeared in the Knoxville Journal on March 18, 1981 in reference to specialized training for the Knoxville Police Department. I would like to take a minute of your time to explain the necessity for the training. The U.S. Marshal's Service (USMS) responded to a request which I personally drafted from the chief of police to provide specialized training in areas regarding security of international events. The request to the USMS was one which was forwarded through U.S. Attorney General Civiletti's office. Since the question seems to involve only the scuba diving and aircraft deployment, I will direct my comments to this area specifically. As you know, the World's Fair site borders the Tennessee River adjacent to the University of Tennessee stadium. At the time we requested scuba diving training, World's Fair plans called for a train to carry visitors across the river from a south parking lot. The south gate where these passengers would enter was projected to receive 33 percent of the total visitors to the fair. The 33 percent represents 3,630,000 visits of an 11 million total projected visitation.

I felt like Knoxville Police Department's response to a water-related incident would be very probable; therefore, I asked the Marshal's Service if they could provide some of our officers who were certified in scuba diving with advanced scuba training. The areas the police department was trained in were immediate helicopter insertion and extraction of scuba personnel into water, underwater identification, and rescue and underwater evidence gathering and identification. Given the unique circumstances of the geographical design of the fair site, I do not believe this training was out of line in the least.

The Knoxville Police Department is now better trained to handle the World's Fair because of the contributions made by a number of Federal agencies. The USMS train-

ing was extremely proficient in every respect. I hope the enclosed will contribute in a positive manner to the Senate Appropriations Committee hearings. If I can be of further assistance, please do not hesitate to contact me.

Sincerely yours,

JOHN R. UNDERWOOD,
Security Coordinator, Knoxville Police Department.

SUBCOMMITTEE RECESS

Senator WEICKER. The subcommittee will recess until tomorrow at 9:30, when we will continue with the Department of Commerce requests for the Economic and Statistical Analysis, Census Bureau, National Telecommunications and Information Administration, and the Minority Business Development Agency.

[Whereupon, at 10:40 a.m., Tuesday, March 31, the subcommittee was recessed, to reconvene at 9:30 a.m., Wednesday, April 1.]

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